

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: :  
IN RE NEW YORK CITY POLICING : Docket #20cv8924  
DURING SUMMER 2020 DEMONSTRATIONS :  
: New York, New York  
February 18, 2022  
----- : TELEPHONE CONFERENCE

PROCEEDINGS BEFORE  
THE HONORABLE GABRIEL W. GORENSTEIN,  
UNITED STATES MAGISTRATE JUDGE

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HONORABLE GABRIEL W. GORENSTEIN (THE COURT):

Let's start the case.

THE CLERK: This is In Re New York City Policing During Summer 2020 Demonstrations, case number 20cv8924. Will counsel please state their appearances for the record, starting with the plaintiffs.

MR. GREGORY MORRIL: Good afternoon, Your Honor, for plaintiffs People of the State of New York, Greg Morrill, M-O-R-R-I-L, for the New York State Office of the Attorney General.

MR. WYLIE STECKLOW: Good afternoon, Your Honor, for plaintiffs in the Matter of Gray v. City of New York, Wylie Stecklow.

MR. GIDEON OLIVER: For plaintiffs in the Matters of Hernandez, et al. v. The City of New York and Minett v. City of New York, Gideon Oliver. Good afternoon.

MR. DANIEL LAMBRIGHT: Good afternoon, Your Honor, for the Payne plaintiffs Daniel Lambright.

MR. ROB RICKNER: Good afternoon, Your Honor, for the Sierra plaintiffs, Rob Rickner.

MX. REMY GREEN: Good afternoon, for the Sow plaintiffs this is Remy Green, and for the recording I should appear in the transcript as Mx. Green, spelled M-X-

1  
2 period, rather than Mr. or Ms.

3 MR. ANDREW STOLL: And good afternoon, for  
4 plaintiff Cameron Yates it's Andrew Stoll, Stoll Glickman  
5 & Bellina.

6 THE COURT: For defendants.

7 MS. DARA WEISS: Good afternoon, this is Dara  
8 Weiss from the New York City Law Department. In addition  
9 to co-counsel who will state their appearances for the  
10 record in just a second, I want to let the Court note that  
11 from the NYPD we have with us Bridget Fitzpatrick, Peter  
12 Callahan, and Heidi Grego (phonetic).

13 MS. GENEVIEVE MILTON: Genevieve Milton for  
14 defendants, good afternoon, Your Honor.

15 MS. JENNY WANG: And Jenny Wang for the  
16 defendants, good afternoon, Your Honor.

17 THE COURT: Okay, welcome, everyone. Two items  
18 in my mind on the agenda today, one that is specifically  
19 on the agenda which is to deal with the prior protest  
20 issue. After that's done, I do want to talk generically  
21 about the order I was just issuing just to implement my  
22 order of, oral orders of last Friday, February 11. So  
23 I'll want to have a discussion about that, and in the  
24 unlikely event I forget to get to them, if someone will  
25 remind me.

On the prior protest issue - let me just remind everyone to keep themselves on must if they're not speaking to the Court, and also any dissemination of the recording of this proceeding is forbidden by court rule.

On the prior protest issue, let me just, let me give the big picture here. The big picture is that the City at some point, and probably today, has to make its arguments about what it's producing and what it contends is too burdensome to produce. I'm not sure I've ever heard that. I don't know if plaintiffs have heard it. But it's not the case that every document that plaintiffs want has to be produced if it's burdensome and not proportional. So between the 100 percent of what the plaintiffs want, there may be some lesser number that is appropriate for production and they don't get the full hundred percent.

By the same token, of course, the City under Rule 34 has to say in response, it's their obligation to say here's how we're responding to this discovery request. We are giving you these documents because we don't feel we can make an objection under Rule 26(b) for proportionality and burdensome. Recognizing that that's a losing argument for us, so these are being produced, and these are being withheld. In the sense, when I say withheld, meaning

1 we're not going to undertake the effort to look for those  
2 documents because we don't think it's proportional to the  
3 case.  
4

5 So that has to be presented. Maybe it should  
6 happen today, maybe it should happen Tuesday. Unless I'm  
7 mistaken, and, believe me, I'm sure I'll hear from both  
8 sides, that's what happens essentially in every discovery  
9 request, that's what should happen with all the other  
10 discovery requests, and we'll get to that in part two. It  
11 should happen really promptly, if it hasn't happened  
12 already, and when I say promptly, I mean in a matter of  
13 days. And then if the parties have a disagreement and I  
14 certainly expect that may happen, they should present that  
15 to me as soon as possible, and then I will say, you know  
16 what, I don't think that's too burdensome. City, you have  
17 to produce that. Or I will say I think the City's right,  
18 that is not proportional to the needs of the case.

19 So to give one tiny example of all this, when  
20 the prior protests issue was first brought to my  
21 attention, I had an immediate reaction that going back 20  
22 years was too much, and I said you don't have to do any  
23 (indiscernible) documents. And then I got, I conceded  
24 last time that was a precipitously issued order because I  
25 hadn't fully heard from the plaintiffs at that point; it

1  
2 was my error. But it may be that there are burdens that I  
3 might say the City should bear for a later protest that  
4 they might not have to bear for a protest from 20 years  
5 ago.

6           So that's the big picture here. I have to be  
7 able to get that. I think we're closer to that than we  
8 were before, but I don't think the City has ever done what  
9 it's supposed to do which is to say here's what we're  
10 producing and here's what is too burdensome to produce.  
11 And it may be that there was a negotiating and discussion  
12 that was just dragging that process out, I don't know, but  
13 that's my big picture. We have to end up with that as  
14 soon as possible, really soon, in days, not just for this  
15 but for everything else. And then I'm going to be ready  
16 and maybe we'll do oral presentations rather than written,  
17 I don't know. To the extent that the plaintiffs have not  
18 been persuaded, I mean they should certainly talk to the  
19 City about what the burdens here involved, and the City  
20 said that they're not going to do it.

21           But then that has to be keyed up for me, and we  
22 can talk about the best process for that, and I'll either  
23 say yes, the City's right, or I'll say, no, the City's  
24 wrong, they're going to have to do it, and they're going  
25 to do it on this timetable.



1  
2           So that's what I had hoped would, when I ordered  
3 last week for this discussion to happen, that's what I had  
4 hoped would come out of it would be a statement about what  
5 is going to be produced and what the City is saying is not  
6 going to be produced. And I guess a timetable, though if  
7 anyone's thinking beyond, you know, a few weeks for  
8 production, that's not realistic for the schedule of this  
9 case.

10           So having said all that, let me turn it over to  
11 the plaintiffs and hear, whoever's speaking for the  
12 plaintiffs, hear their thought about what we can do today  
13 and whether, you know, how we should proceed in order to  
14 get to that, whether we should try to do something on  
15 Tuesday or Wednesday. So I'll turn it over to the  
16 plaintiffs to start.

17           MX. GREEN: Thank you, Judge. I think, you  
18 know, listening to what you've just said, my first  
19 reaction is that I could not agree more. And I think to  
20 begin with that's why we need the motion back in June last  
21 year to get in compliance with the 2015 amendment, and I  
22 think that's why you ordered the algorithm letters that we  
23 ended up getting throughout that period. Right? The  
24 (indiscernible) at that time, as I understood it, was to  
25 get exactly the kind of information you're talking about,

1  
2 which is what the City's producing, what they aren't, and  
3 what the burden would be of producing what they claim is  
4 too burdensome. Yet, here we are nearly a year later  
5 without any of that still.

6           And I think one of the other issues, and it was  
7 highlighted last week by Mr. Rickner and we'll likely get  
8 to some examples of that today is that the City's position  
9 changes constantly. You know, I think the, for example,  
10 and, again, we'll get into this later, throughout this  
11 case I think three or four times the City has formally  
12 said they are not objecting based on burden to producing  
13 49, and, you know, I think we thought that was the end of  
14 that, and here they are today asserting that gathering 49  
15 is too burdensome even as to the protests that took place  
16 in the summer of 2020.

17           Now, in terms of burden, one of the I suppose  
18 guiding principles that I should we should have in mind  
19 here, and there are plenty of cases, but I found a case,  
20 Overrule Your Corporation Counsel Objection, written by  
21 Judge Dolinger to read from today, and this case is *Wesley*  
22 *v. Muhammad*, and it's on Lexis at 2008 LEXIS 74342.  
23 Corporation Counsel's, quote, "underlying assumption that  
24 an institution may shield itself from discovery by  
25 utilizing a system of recordkeeping which conceals rather

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than discloses relevant records or makes it unduly difficult to identify or locate them, thus rendering the production of documents an excessively burdensome and costly expenditure is incorrect." You know, this is a well-settled principle that amounts to if your file system makes no sense, that's not a valid burden objection.

And I think, you know, I think we are still very far away from understanding what they think the burden is, but most if not all of what was in the letter that was filed this afternoon was saying that their file system is so bad that they can't search it. That's not a real burden. And I also don't think it's true. But --

THE COURT: Mr. Green, hold on. I think we're -- I'm sorry, Mx. Green, I think we're jumping ahead.

MX. GREEN: Okay.

THE COURT: Because you're now arguing specific burden and I --

MX. GREEN: Understood.

THE COURT: -- mean -- if your answer to my question is we should resolve what I, we should resolve the burden issue as to each point and each set of documents today and I'll say yes, that is a burden or no, that's not, if that's what you want, then we can do that, but that's --

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2 MX. GREEN: Yeah, I --

3 THE COURT: That's not --

4 MX. GREEN: I apologize --

5 THE COURT: -- this second.

6 MX. GREEN: I apologize. Then let me cut to  
7 the chase and say, yes, I think that's the right way to do  
8 it.

9 THE COURT: Okay, and do we do it now in this  
10 phone call?

11 MX. GREEN: I mean --

12 THE COURT: Maybe I should ask - go ahead.

13 MX. GREEN: Sorry, I think, yes, we should do  
14 this on this phone call. You know, with the schedule we  
15 have, I don't know that we have another option.

16 THE COURT: Yeah, I tend to agree too, and we  
17 have the right people here. Ms. Weiss, your thoughts on  
18 this?

19 MS. WEISS: Your Honor, we apologize if we  
20 misunderstood your order, but it seems as if you were  
21 asking for us to express what the burdens are. From the  
22 very beginning, we had a burdensomeness argument and in  
23 addition to other objections and indicated that we weren't  
24 producing any documents. Through a number of  
25 conversations and Your Honor's instructions and even in

1 large part based upon the conversations that we had on  
2 Wednesday, an additional conversation that I and my  
3 colleagues have had with our clients, we're certainly  
4 going to produce a number of these documents despite the  
5 burden. Some we still I think are too burdensome and not  
6 proportional, and, by the way, this is not completely  
7 sure, but I think that the Magistrate Judge Dolinger case  
8 that Mx. Green cited before for proportionality, I  
9 (indiscernible), but I think that that's the case.

11 So based upon proportionality, we certain think  
12 things like the WES documents are not proportional, and we  
13 would not produce them based upon burdensomeness and  
14 proportionality. But we haven't gone through each  
15 document and each category of documents to determine what  
16 we would produce and what we wouldn't produce. We simply  
17 laid out what the burdens were, and I have three attorneys  
18 from the NYPD on the call now who are certainly prepared  
19 to answer any questions regarding the specific burden.

20 But I think that perhaps letting plaintiffs and  
21 the Court know in writing once we've certainly come to a  
22 conclusion in the next few days of course, very quickly,  
23 what we will and will not produce. I don't think there is  
24 any reason to go through things document by document if  
25 we're going to, in fact, produce them. I imagine that

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what we state we're not going to produce due to burden and not being proportional, plaintiffs are not going to agree with, and we could argue that at that time, but I don't know if we're there yet today.

THE COURT: I think we have to try to do this today. I don't think we can put this off any longer. We shouldn't be here at this point. So I think we're going to go through these, and I'm going to tell you what you have to produce, and I'm going to give you the day you have to produce it. I don't see our waiting.

Let's go through your letter, and before I do that, I just want to make sure from plaintiffs' point of view we have the right categories here and the right protests?

MX. GREEN: That's right, Your Honor.

THE COURT: Okay. All right, so turning to your letter. I didn't understand the double asterisked footnote. What is this reference to 750 boxes? Is that for all of these combined? What are you talking about?

(pause in proceeding)

THE COURT: Ms. Weiss, I don't know if you're on mute, but I'm not getting an answer.

MS. WEISS: I'm sorry, I was actually going to ask Mr. Callahan if he can explain the relevance of the

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approximate 750 boxes.

THE COURT: If it at any point you need a break to consult with someone, that's fine. My preference is for you to answer the things you know, but if you don't, I'll live with your turning it to someone else. There's a cost to that. If you need a break to consult, if you have a mechanism you're doing it outside this phone call, I don't care. What do you want to do with the answer to this question?

MS. WEISS: I can answer if you'd just give me about 20 seconds.

THE COURT: All right, we'll wait for you. Take your time.

MS. WEISS: Thank you.  
(pause in proceeding)

MS. WEISS: Okay, there are - these are boxes that are, these are archived through an archive company called GRM, and NYPD has tallied the number of boxes that could potentially have responsive information of them that may come from different units. The Chief of Department operations unit can have documents in about 110 boxes. Patrol Services Bureau may have documents in 41 boxes. And IAB could have somewhere between 500 and 600 boxes. These are typical sort of banker's boxes that can hold

1  
2 about 2,500 pages each. So those are the amount of  
3 archived, NYPD archived boxes that would have to be looked  
4 through to find the documents and information that has  
5 been archived in response to plaintiffs' request.

6 So that's to say that some documents are  
7 electronic. Obviously, they wouldn't be in these 750 or  
8 so boxes. Some documents reside elsewhere. But of  
9 documents that appear at this point to have been archived,  
10 they could be in somewhere within these 750 boxes  
11 approximate.

12 THE COURT: I'm totally lost. Is it, I mean  
13 boxes when they're put in archives usually have an  
14 accession number. Someone has an index that says what's  
15 in there. I don't understand what you're talking about.

16 MS. WEISS: The index --

17 THE COURT: Maybe we - I think what I'm going  
18 to do is I don't - talking about boxes generally doesn't  
19 make sense. If in response to a certain request - we're  
20 going to go through these by category. If in response to  
21 a category you tell me to look for this we have to look  
22 through 750 boxes, then you will say that. I might need  
23 your person to say that. But that's, you know, I don't  
24 understand what you're talking about. I don't understand  
25 if you're telling me that for each of these categories of



1 all these things we have to look through 750 boxes.  
2 Presumably they have dates on them if nothing else. So  
3 I'm not sure what you're talking about. Do you understand  
4 my confusion?  
5

6 MS. WEISS: I think I do, Your Honor. Not  
7 everything is archived, and there is an index to the  
8 archives, but there --

9 (interposing)

10 THE COURT: All right, then let's wait - to me  
11 this footnote is irrelevant, and it makes no sense.  
12 (indiscernible) has boxes that have to be reviewed to  
13 ascertain if they contain (indiscernible). This footnote  
14 makes absolutely no sense. I am ignoring it, and if you  
15 think looking through boxes is relevant to any particular  
16 category and you want to tell me what the burden is for  
17 looking at that category, you're free to tell me. But the  
18 footnote as written is nonsensical and I haven't heard an  
19 explanation that makes sense to me.

20 Okay, so let us start with the 2002 protest. So  
21 mass arrest reports, tell me what these are, how many are,  
22 are they generated when there's a mass arrest, and  
23 presumably, you know, there's a limited number of mass  
24 arrests. I don't know how many in 2002. Was there ten,  
25 were there twenty? What is going on with these? What are

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they and how do you find them?

MS. WEISS: Your Honor, mass arrest reports are generated when a mass arrest processing center is activated which can happen during a protest or any other large scale event. They list personal information about the people arrested, what they were arrested for, the arresting officer, and some other information. For the WEF demonstrations there were not a huge number of mass arrests, I don't know the exact number. I'm not sure if any of my clients on the call know the exact number. But it's more a matter of finding where they reside. There's not a large number of them, but they can be in one of many places, most likely archived.

THE COURT: Okay. Which of your clients is most knowledgeable about this?

MX. GREEN: Your Honor, if I may, I think I can actually cut through this which is we have a deposition of an NYPD person named Lieutenant Chris Czark taken in 2017 specifically about mass arrest reports in these eras. And in his testimony he says there's one folder on his share drive where he keeps all of them for every demonstration, and I think it's even in a folder by event. And we've been telling defendants this, and I've been sending them the transcript since June last year saying all you need to

do is call Chris Czark. At the meet and confer on Wednesday, they still had not called Chris Czark.

It's, you know, it's - I think the answer to this is it's very easy to do. We're, you know, we're fairly sure about that. And all they say in their letter about this, when we I think pointed that out and cited the deposition testimony, is that it's not necessarily true that he still organizes things in the exact same way he did in 2017 when he was talking about every protest from 2017. And, you know, I don't think that's been rebutted.

THE COURT: Mr. Czark, what's his title?

MX. GREEN: Lieutenant.

THE COURT: So you think Czark has this in a very accessible place.

MX. GREEN: Correct.

THE COURT: All right, well, if you're willing to - I'm willing to move on and direct that they be produced, that the search consists of getting Chris Czark to produce them, and that is obviously very easy, and that should be the end of it. Any problem with that, Ms. Weiss?

MS. WEISS: Your Honor, earlier this afternoon Mr. Callahan met with Lieutenant Czark, and - please correct me if I'm wrong, Peter - but Lieutenant Czark only

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2 has spreadsheets dating back to 2003. So he would not  
3 have those on the WEF which occurred in 2002.

4 MR. CALLAHAN: That is correct.

5 THE COURT: I'm sorry, you said spreadsheet? I  
6 thought he had the actual reports.

7 (interposing)

8 MR. CALLAHAN: -- spreadsheets.

9 THE COURT: A report is a spreadsheet.

10 MS. WEISS: That's correct, Your Honor.

11 THE COURT: Okay. Now, I'll get back to you,  
12 Mx. Green. Ms. Weiss, I had asked you who's the most  
13 knowledgeable about this. Is it Mr. Callahan? About all  
14 of it.

15 MS. WEISS: Your Honor, different people on  
16 this call are more knowledgeable about different things  
17 depending on what they've done. That's which they're all  
18 on the call. Ms. Grego is familiar with the electronic  
19 portion of it, not the paper portion of it. So for  
20 anything that was before things were put on computer in  
21 the NYPD, which was fairly recently, Mr. Callahan and Ms.  
22 Fitzpatrick would, one or both of them would be essential  
23 to speak depending on what they particularly did.

24 THE COURT: Okay. So, Mx. Green, so we have  
25 this problem with 2002.

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2 MX. GREEN: Okay, I mean I suppose then the  
3 question becomes, you know, I would, I don't think that  
4 we're going to ask them to go piece together documents  
5 destroyed in the hurricane or anything like that, but if  
6 what they're saying is they talked to Lieutenant Czark  
7 now, this morning, and he said he has everything and it's  
8 easy except for stuff before 2003, the answers then  
9 become, or the question then becomes is there an easy way  
10 to find or a reasonable way to find what's from before  
11 2003. And --

12 THE COURT: All right, Mr. Callahan, what would  
13 it take to find before that?

14 MR. CALLAHAN: Absolutely, sir. So we would  
15 need to get their index of their GRM storage to see  
16 whether or not --

17 THE COURT: Who's they?

18 MR. CALLAHAN: Criminal Justice Bureau.  
19 Criminal Justice Bureau being the custodian of the mass  
20 arrest spreadsheet reports. We would need to get their  
21 index to see if they have - and we do have it; we just  
22 need to go through it to see where they have located their  
23 records from 2002 and specifically if they have it  
24 detailed enough to see if that lists mass arrest  
25 spreadsheets or maps the records generally. And then we

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would request those boxes, go through them.

It would take a week or two to get the box, but presumably if it's one box, you'd be able to go through it rather quickly. If it's more than that, it's going to take some time. But for one mass arrest spreadsheet or for the World Economic Forum which I believe took place over the course of a week, I would expect them to be in one or two boxes, if that. If they maintain them.

THE COURT: Okay. And assuming it's one or two boxes, I assume it would just take a matter of a few minutes to go through them to see if it's in there. It's a recognizable document?

MR. CALLAHAN: Yes, sir, and, again, we'd need to make sure that that requires the boxes to be specifically listed on their index.

THE COURT: If they have it listed, yeah.

MR. CALLAHAN: Correct.

THE COURT: Got it.

MR. CALLAHAN: If they don't, I don't know what Your Honor would ask us to do as far as pulling everything from 2002, etc. I guess that depends on the specificity of the index.

But if I could make note of what Ms. Weiss was saying earlier about 750 boxes, just real quick, those

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2 were IAB boxes, Chief of Department Operations Division  
3 boxes. Those would be the two main custodians I believe  
4 for the records we're looking at on here as far as NYPD is  
5 concerned. And --

6 (interposing)

7 THE COURT: I understand --

8 MR. CALLAHAN: -- mass arrest reports.

9 THE COURT: I understand that, but if I did  
10 order you to get the mass arrest reports from 2002 and  
11 they were identified, you would not have to look through  
12 750 boxes --

13 MR. CALLAHAN: Yes, absolutely.

14 (interposing)

15 THE COURT: -- identified. That's why I said  
16 it was meaningless to tell me how many --

17 MR. CALLAHAN: Understood. Piece by piece, I  
18 hear you, sir.

19 THE COURT: Okay. All right, I'm going to go  
20 through these --

21 MX. GREEN: Your Honor, if I --

22 THE COURT: -- I'll give you a chance - go  
23 ahead.

24 MX. GREEN: If I may. I think the other, just  
25 a brief thought, and this is going to be a blast from your

1  
2 past I suspect. I think that the exhibits to depositions  
3 in (indiscernible) have all of - which was a case you were  
4 on - have all of the mass arrest reports in them. So  
5 another way to get them, to get at this would be the  
6 exhibits from the depositions in Allen but I don't know  
7 where those live if anywhere.

8 THE COURT: All right, well, that's going to be  
9 a category coming up, but thank you for pointing out that  
10 we don't need to do both if I order the exhibits, and we  
11 wouldn't need to do both.

12 MX. GREEN: Very likely.

13 THE COURT: Okay, so, Mx. Green, let me just  
14 tell you my plan here. My plan is to go do what I'm doing  
15 now. We'll see how long this works. Going through each  
16 of these categories to understand the burden from Mr.  
17 Callahan and anyone else with personal knowledge.

18 MX. GREEN: Understood.

19 THE COURT: And then at the end of it - while  
20 it's going on, if there's something you want to ask Mr.  
21 Callahan, that's fine, I'll give you a chance, you can  
22 pipe up if I seem to forget to ask you. And then at the  
23 end of it all, I, you know, I'll give people a chance to  
24 say what they think is burdensome and not burdensome and  
25 what should be produced and not be produced, and then I'll



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make a ruling. That's my plan.

MX. GREEN: Understood, Judge.

THE COURT: Okay, so I'm going to keep going. I'm going to have you, Mx. Green, I just want you to jump in if there's something you want to ask Mr. Callahan or want to say. All right?

MX. GREEN: I am more than happy to do that, Judge.

THE COURT: Okay. So the next category is what's called 49s which I know if the City thinks that they aren't a specific thing, but I don't even what - Mx. Green, maybe tell them what you think a 49 is and then they can say what they think a 49 is.

MX. GREEN: Yes. Yes, Your Honor. I mean a 49 is shorthand for a memo. It's got a To, a From, a Subject. It's got a body, and then it's got a cc list. They're the way that, for example, you know, you request an SRGD at a protest or, you know --

THE COURT: SRG?

MX. GREEN: Strategic response group. One of the divisions of NYS at issue in this case. They are - in large part they are how the NYPD mechanically functions in a lot of contexts. They are - we need these people to go here. And then also they cover, or at least they used to

cover, reports on how an event went or how an enforcement action went, and I think, for example, in particular for the World Economic Forum, I believe the RNC, there were some 49s that were very critical of the police response, and my understanding is they stopped doing the after-action report 49s essentially after those got disclosed in litigation.

But they cover a range of things, but they are historically the basic method of communication in the NYPD.

THE COURT: And is this something that would be in the deposition transcript exhibits?

MX. GREEN: I believe many would, yes, although I am not certain, as certain it would be all of them.

THE COURT: Okay. Mr. Callahan, see, I don't even know how - if what these are are memos, what is the, what methodology could one use to search for these documents?

MR. CALLAHAN: So we would call them communications. To/from memos that Mx. Green is referring to are detail requests. And then I believe the post-event 49s they're referring to is an unusual occurrence report which are only used in specific circumstances, unusual circumstances. So as far as --

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THE COURT: Is that your understanding of what an after-action report is? When you say a post-event 49.

MR. CALLAHAN: No, I was referring to unusual occurrence reports.

THE COURT: So that's a kind of --  
(interposing)

MR. CALLAHAN: And my - in my time here I can't say I've seen, you know, post-event reports or the phrase (indiscernible) reports after-action.

THE COURT: After-action report is not a phrase you use?

MR. CALLAHAN: Not me personally. I've been here since 2016.

THE COURT: All right. Okay, so what's the - what would be the method for search --

MR. CALLAHAN: So if someone asks me --

THE COURT: It's a little --

MR. CALLAHAN: Absolutely. So if someone asks me for 49s from the World Economic Forum, knowing that they're probably protest related, I would request Chief of Department Operation Division TRM index, look through there, get all the TRM box numbers that state they have detail information in them, detail requests, and communications. I looked at the index today, and those

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are the two main categories of documents or boxes that we would request from Chief of Department OPS Division which should be the custodian for these records, and the total there was just north of I believe 100 boxes. Excuse me, let me apologize there for a second. That would be totaling ELM, Occupy Wall Street, RNC, and World Economic Forum. So it would be a smaller amount for the World Economic Forum, but looking prospectively, we would order all the boxes in one fell swoop if that's what happened. If that's what's ordered.

THE COURT: You don't know how many are attributable to each protest?

MR. CALLAHAN: Not at the current moment.

THE COURT: Did you ever --

MR. CALLAHAN: I do have --

THE COURT: Do the numbers, I mean was it equally divided between them? Were there many more for one versus the other?

MR. CALLAHAN: I don't recall. I can look at it, but it's a large index. Those aren't obviously the only types of records that they're storing.

THE COURT: So this is an index of unusual occurrence reports for these protests, is that what it is, and post-events?

MR. CALLAHAN: No, so that is not what I'm stating. These are more the prospective or before the event, and I would request all the boxes that say communications on them because in the even there was any 49 after the event discussing it, it would be in a communications box. Or, alternatively, if we're talking about electronic storage, you would hope that that command has a communications share drive location.

THE COURT: I've lost you when you said shared drive. I thought we were talking about boxes, I'm sorry.

MR. CALLAHAN: I switched into a little electronic storage. So for the date where it cuts off on the index, you would then hope that the commands have a communication share drive location electronically.

THE COURT: I see, because you're looking at all of them. I'm kind of focusing on these one at a time. All right, that's fine. When I say one kind of protest at a time. All right. So after action reports. I assume you saw this chart. Does that have meaning for you as to how you would look for that, and if not, tell me about it.

MR. CALLAHAN: For me personally, no, but I would defer to Ms. Fitzpatrick who runs our civil litigation unit which handles document requests.

MS. WEISS: Your Honor, if I may --

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2 THE COURT: All right, Ms. Fitzpatrick.

3 MS. WEISS: Your Honor, if I may, just before  
4 Ms. Fitzpatrick speaks, when I prepared this chart, I  
5 considered after-action reports to be a type of 49 I  
6 suppose because in my experience that is what I have heard  
7 them called. As Mr. Callahan explained, 49s to be pretty  
8 much any communication, any memo within the police  
9 department, and an after-action report would also be that  
10 type of to/from memo. But I will let Ms. Fitzpatrick  
11 explain further.

12 MX. GREEN: And for what it's worth, we're all  
13 in agreement there.

14 MS. FITZPATRICK: I apologize. I lost the  
15 thread. We're speaking specifically now with looking for  
16 49s with regards to, as they are on shared drives?

17 THE COURT: No, we're talking, right now we're  
18 on the 2002 WEF protest.

19 MS. FITZPATRICK: Okay.

20 THE COURT: And we're trying to figure out what  
21 the burden is to you to producing after-action reports,  
22 how you find them and how you would produce them.

23 MS. FITZPATRICK: Well, they'd be paper-based  
24 and they would be stored, as Mr. Callahan said, and that  
25 the company that we currently use is GRM. This may

1 PROCEEDINGS 31

2 require looking for other boxes in other places because it  
3 depends upon when they were stored and by whom. So that  
4 would be dictated largely by the command, so that would  
5 require us going back and speaking to somebody with  
6 historical knowledge with regards to document storing  
7 procedures for the Criminal Justice Bureau at that time.

8 THE COURT: This is different from your 49  
9 process?

10 MS. FITZPATRICK: No, I mean it's all basically  
11 the same. It's all just communications. 49 is an  
12 umbrella term, and then there's like specific types of  
13 subjects that one would address.

14 THE COURT: Because Mr. Callahan was talking  
15 about looking through an index. He said he's already done  
16 it.

17 MS. FITZPATRICK: He was talking - sorry, Your  
18 Honor, he was talking specifically about the index for the  
19 boxes that are stored in GRM, which I mean I'm basically  
20 saying the same thing. I mean it would require - but what  
21 I'm trying to say is that there's always the possibility  
22 that these boxes were stored prior to the time of the  
23 department using GRM as a storage facility and they may be  
24 stored in a different location and they may have a  
25 different type of index. So in order to be able to make

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sure that we did a fulsome search, I would be more comfortable with going to somebody from the Criminal Justice Bureau and speaking to them specifically with regards to their policies and practices for storage at the time of the event and how long they keep things onsite and then where they send them when they go offsite.

THE COURT: Okay.

MS. FITZPATRICK: That would be the more fulsome way.

THE COURT: Okay, so we're redoing our discussion now of 49s because Mr. Callahan assumed GRM would be sufficient. You think we should, you'd be asking about other units or other storage facilities rather, is that what you're saying?

MS. FITZPATRICK: I mean based upon my knowledge of the department, I've been with the department since 2010, I mean I feel like if we wanted to do a thorough search, that would be the most appropriate way to do it.

THE COURT: Okay, well --

MS. FITZPATRICK: I think a jumping off point, Mr. Callahan is correct, that it would be a jumping off point and that perhaps, depending upon how well things are indexed and stored, and that's largely dictated by the



persons doing it and how the command decides that they want it done, it could potentially be, but I mean to my mind, since document production is what I do, I would think that that would be the best way to do it. More complete. Which would add quite a bit of time onto the search, requiring us going back and getting historical knowledge and finding somebody who knows exactly how the bureau was run at the time of the World Economic Forum and what types of documents they produced at that time and then where they were stored in addition to looking at GRM.

THE COURT: All right. Again, there was something about the term after-action report that I guess Mr. Callahan wasn't familiar with and, therefore, deferred to you. But it sounds like Mr. Callahan was describing one search process, and you're just tacking on another possibility there.

In terms of the term after-action reports, does that have some particular meaning to you? Is that just a kind of 49, a memo about the protest that happens afterwards as opposed to before?

MS. FITZPATRICK: Another way to think of it, Your Honor, is to think of it as something along the lines of things that we learned from this particular event. And to my understanding, again, with the caveat that I just

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joined the department in 2010, I wasn't there in 2004  
which I believe is what we're discussing right now --

THE COURT: 2002, 2002.

MS. FITZPATRICK: Right, well, with regards to  
that, yes. What I mean to say, an after-action report  
would probably look a little bit different than a 49  
although it could be in the form of a 49 depending upon  
how the author decided to write it. But it would  
basically contain some information regarding an analysis  
of the tactics that were used at the event and, excuse me,  
a discussion of, you know, things that we can improve upon  
or that worked well and that we should continue to do.  
The department.

THE COURT: Okay.

MS. FITZPATRICK: Kind of like a postmortem.

THE COURT: Okay.

MS. FITZPATRICK: Of an event.

THE COURT: Deposition transcripts. Ms. Weiss,  
I assume that's not Mr. Callahan or Ms. Fitzpatrick.

MS. WEISS: No, that is my office, Your Honor.  
I have learned that all of the files having to do with any  
of these WEF lawsuits that my office dealt with, I believe  
there are two, one is Burly and one is Allen. They have  
been archived, they've been archived for several years.

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The archiving is done internally. We don't have an outside company doing the archiving for us. It's our law department's own (indiscernible) department.

There's no - for the WEF cases there's no sort of index. There's just the boxes with all of the case materials in them. So other than getting all of the boxes for both of the cases from the archives, there's no way to tell what's in each box. And --

THE COURT: How many boxes are there?

MS. WEISS: I believe I was told there's about a hundred for the two cases, and then once we have the boxes, there's no guarantee, in fact, I doubt that the deposition exhibits are put in their own folder or file. They're probably just scattered throughout the redwelds in the files wherever they would have been put according to the attorney on the cases filing methods.

THE COURT: Okay, see - go ahead.

MS. WEISS: And I don't think - I'm trying to think, Your Honor, I don't think there are any attorneys left at the law department who worked on the WEF cases. I played a very, very small part but I certainly had nothing to do with filing or archiving of those cases.

THE COURT: All right, CCRB/IAB records from this protest. There's no, it just says 30 hours. I don't

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know anything else about it. Maybe you're not - are you -  
I guess for all 2002 you're saying that that's not  
proportional. So why don't you talk about that.

MS. WEISS: Well, Your Honor, I can speak.  
(indiscernible) on the line can't speak as to the CCRB  
records. I can. After a conversation with my liaisons at  
the CCRB, and they can certainly pull up complaints from  
2002 from the, approximately from the time period there's  
nothing that indicates that they're specifically related  
to WEF protests. They can use names that, they can try to  
look by names that have been pulled from the lawsuits that  
are in my office, but there's no way --

THE COURT: Can they search by date?

MS. WEISS: No, they can't search by date.  
They can search by year. They can possibly put in some  
terminology that might possibly lead to the type of  
complaints - there's no way to, say, put in the date of a  
protest or WEF or even - they could put in protest but  
it's no guarantee that it's going to lead to that if  
whoever puts it in didn't put in the word protest.

THE COURT: All right, and when you say 30  
hours, that meant your plan was to get all the 2002 and  
have someone go through and find the ones that relate to  
WEF protesters?

1 PROCEEDINGS 37

2 MS. WEISS: Try to narrow it down as much as  
3 possible to try to figure out what might be related to a  
4 WEF protest.

5 MX. GREEN: Your Honor, I suppose we would like  
6 to know who (indiscernible) that because that just doesn't  
7 seem plausible that you can't narrow by the date of  
8 incident. I mean like every CCRB document says the date  
9 of incidence on it.

10 MS. WEISS: Yes, but they're not searchable in  
11 the CCRB's database by date.

12 (interposing)

13 THE COURT: -- computerized, you're saying  
14 these are computerized records, Ms. Weiss, from 2002 that  
15 have the date but you can't search by date?

16 MS. WEISS: That is what I have been informed.  
17 I'm sorry I don't have someone from CCRB on this line  
18 today.

19 MX. GREEN: Your Honor, in this case I think  
20 repeatedly we hear things are impossible until we get into  
21 the room with the people who actually understand --

22 THE COURT: Okay.

23 MX. GREEN: -- repeatedly find out it's  
24 possible.

25 THE COURT: Okay, let's, I mean we're going

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through this. I'm going to make decisions based upon what's represented. If at any time in the future you find out that what was represented is not correct, Mx. Green, obviously that would be a basis to come back if, in fact, it showed some lack of burden. Okay?

MX. GREEN: Okay.

THE COURT: And if you need me - it's hard to believe the City would protest, but they should certainly if at an appropriate time, in conjunction perhaps with other CCRB issues, bring someone from the CCRB to verify and to answer questions about it.

MX. GREEN: Yes, Your Honor, I mean I suppose I don't know how we would figure it out if we can't take a deposition, but it's, it has just been I think our experience in this case and in other cases. For example, when we were told that it was extremely burden to export audit trail logs, even last week, as soon as we were in a room with the people from NYPD legal, we found out it was actually quite easy and it could be done at the press of a button. And, you know, it was at multiple conferences that --

THE COURT: I --

(interposing)

THE COURT: Mx. Green, we got to stay on --

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2 MX. GREEN: I understand --

3 THE COURT: I already - what I told you was I  
4 thought I was doing better than a deposition which was I  
5 think they should make such a person available to you,  
6 and, you know --

7 MX. GREEN: Sorry, I misunderstood.

8 THE COURT: -- find out --

9 MX. GREEN: Great, I will --

10 THE COURT: No, I meant in a non-deposition  
11 context.

12 MX. GREEN: Great, yeah --

13 THE COURT: That should be something that's an  
14 option where you have a good basis for it. There's no  
15 point wasting time at a deposition (indiscernible) someone  
16 on a phone call.

17 MX. GREEN: Understood.

18 THE COURT: So if something changes, that if  
19 something is misrepresented here, obviously that changes  
20 the burden, then you're welcome to first talk to them and  
21 come back to me.

22 MX. GREEN: Understood.

23 THE COURT: Okay, I'm going to keep going  
24 through these. Maybe we'll end up being duplicative, I'm  
25 not sure. But let's now go through RNC 2004. So, Ms.

1 PROCEEDINGS 40

2 Weiss, the way I read this is for the mass arrest reports  
3 there is no impediment and that this is just a matter of I  
4 guess someone reviewing --

5 MX. GREEN: Oh, Your Honor --

6 THE COURT: What?

7 MX. GREEN: -- IAB is separate from CCRB. They  
8 are different agencies. One is within the NYPD and the  
9 other is a city agency.

10 THE COURT: Okay.

11 MX. GREEN: So I don't think CCRB covers IAB.

12 THE COURT: Ms. Weiss, what's the answer on IAB  
13 records?

14 MS. WEISS: That's correct. Mr. Callahan,  
15 correct me if I'm wrong, you referred to the 500 or 600  
16 boxes of IAB records in storage. Would that be applicable  
17 to IAB records for the WEF?

18 MR. CALLAHAN: Yes, it would. It was just like  
19 the other set of records made to be divided up into which  
20 ones were actually relevant to the WEF and not  
21 (indiscernible) --

22 THE COURT: Are they computerized in some way  
23 or not?

24 MR. CALLAHAN: No, they are paper files held in  
25 storage in DRM or at the command of the location.



1 PROCEEDINGS 41

2 THE COURT: Okay.

3 MR. CALLAHAN: And there you would be demanding  
4 the boxes from the storage location, having to sift  
5 through --

6 THE COURT: Do you have any IAB boxes or IAB  
7 record boxes for 2002?

8 MR. CALLAHAN: Not specifically for 2002. We  
9 need to review the index.

10 THE COURT: Okay.

11 MS. FITZPATRICK: Your Honor, if I may. I'm  
12 sorry, there's also a database, an IAB database.

13 MR. CALLAHAN: Yeah, let me be clear. These  
14 were the paper files are only from 1999 to 2018. Sorry.

15 THE COURT: I'm sorry, so there's a  
16 computerized database. I've lost you, try me again.

17 MS. FITZPATRICK: There's a computerized  
18 database, it's called IAPro. It was operational, I mean  
19 you can still access it, but there's a new database that  
20 actually is now used that went online in 2012 called ICMS,  
21 Internal Case Management System.

22 THE COURT: So from this period there's a  
23 database that shows what?

24 MS. FITZPATRICK: So logs basically which would  
25 be basically case number, log number, and then a brief

1  
2 description - let me state, restate - would be a  
3 description of the allegation, and then there would be  
4 some, there'd be another page that you go to that would  
5 give you a little bit more of a summary of what the  
6 underlying allegation, like what it was actually alleged  
7 to have happened.

8 THE COURT: Okay, but it's not obviously the  
9 file.

10 MS. FITZPATRICK: No, no. As Mr. Callahan  
11 said, up until 2012 all of the internal files for IAB were  
12 paper based.

13 THE COURT: Okay.

14 MX. GREEN: Can you search IAPro by date?

15 MS. FITZPATRICK: You can search, yes,  
16 beginning date/ending date. It's a key incident received  
17 date range though, so I don't know if it's actually the  
18 date of the occurrence or the date when the allegation was  
19 made. I think it would be the date that the allegation  
20 was made --

21 (interposing)

22 THE COURT: So you don't even know if it's -  
23 you don't know if it's searchable by occurrence.

24 MS. FITZPATRICK: Sorry, I'm looking at the  
25 search page right now. No, I do not. It doesn't appear

1 PROCEEDINGS 43

2 to be, but I could be mistaken.

3 THE COURT: Okay, but if you did search by  
4 occurrence, it would give you this sort of summary data --

5 MS. FITZPATRICK: Yes.

6 THE COURT: -- and it would not tell you where  
7 the paper file was or it would?

8 MS. FITZPATRICK: You would be able to know  
9 that based upon the case number, and it would also --

10 THE COURT: I see.

11 MS. FITZPATRICK: -- indicate the group that  
12 investigated it.

13 THE COURT: I see, so you could look up the  
14 case number.

15 MS. FITZPATRICK: Yes.

16 THE COURT: Okay. All right, you may need to  
17 go over this again with me as we, you know, I'm doing this  
18 - you may not realize this, Ms. Fitzpatrick and Mr.  
19 Callahan, I mean I'm looking at a chart and I'm going  
20 through the chart box by box. So you may be answering  
21 questions that apply to all the protests, and I'm not  
22 focusing on that now so I may ask you the same questions  
23 over and over again. Just because that's the way I'm  
24 thinking about the problem.

25 Okay, so I guess, Ms. Weiss, there was, your

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2 chart is not entirely complete with respect to CCRB/IAB,  
3 because the way I read it, I thought you can get all of  
4 these records within 30 hours, over 30 hour of work, and I  
5 think it sounds like you have some impediments to the  
6 extent that you have to, you'd have to order boxes, you  
7 have to identify the records and order up boxes. I gather  
8 that's an issue.

9 MS. WEISS: That's correct, Your Honor.

10 THE COURT: Okay. See, this is the problem  
11 here. You - we haven't, and I'm not going to - I know the  
12 position (indiscernible), I'm not necessarily disagreeing  
13 with them. Right now I want to solve the problem. And,  
14 you know, the thing that should've happened hasn't  
15 happened which is the City saying this is too much and why  
16 and here's what it would entail and here's what wouldn't  
17 be burdensome with respect to this protest, and,  
18 therefore, this is what should be ordered. We'll see if  
19 we can keep doing this and for how long. All right, let's  
20 turn to 2004.

21 MS. WEISS: Your Honor, if I may,  
22 (indiscernible) at least to 2004 are in (indiscernible).  
23 Mr. Callahan was able to locate a large traunch of  
24 documents that are responsive to what plaintiffs are  
25 requesting. He found sort of a creative way to get the

documents. So they are available, they have been collected. There's a huge number of documents, I don't know the number offhand. Perhaps Mr. Callahan does. And I don't think we can guarantee that they are every single one of the mass arrests reports, 49s, etc. But it would certainly be the majority. And from now it's a matter of us at the law department reviewing them, redacting them, and getting them prepared for production.

MX. GREEN: Your Honor --

THE COURT: Well --

MX. GREEN: -- on that I think, I hope we can just do this here. We're talking about mass arrest reports I assume. I don't think that - I think there are only three possible redactions which would be names, first name, last name, and address, and I just want to make sure that that's what we're talking about. And then the redactions would just be a column.

MS. WEISS: Well, Mx. Green, with respect to mass arrest reports, yeah, it would be the personal information regarding the arrestees, but I think the documents that Mr. Callahan has located are more than just mass arrest reports. There are a number of different documents, and I think other than deposition transcripts and I'm not sure about, well, certainly not CCRB, but I'm

1  
2 not sure about IAB records and Mr. Callahan should be able  
3 to answer that. We seem to have most if not all of the  
4 documents.

5 THE COURT: Okay, well, Mx. Green was just  
6 talking about, just wanted to make sure you weren't doing  
7 any redactions other than the personal detail. So is that  
8 correct that that's what the redactions are about?

9 MS. WEISS: That's correct.

10 THE COURT: Okay, that's all that should be  
11 redacted obviously. Okay, so Mr. Calla - I mean this is  
12 all very mysterious. So, Mr. Callahan, can you explain  
13 what it is you did and what it is you think you found and  
14 whether there's some other methodology for getting the  
15 mass arrest reports, 49s, and after-action reports for the  
16 2004 RNC protest?

17 MR. CALLAHAN: Yeah, sure, so I went to more  
18 senior members of my command, my command structure who  
19 have been around much longer than I have, asked if, you  
20 know, in the past whether there was a central repository  
21 for these records or, you know, if there's a creative way  
22 to go about collecting them. And what I was told was to  
23 check with our FOIL unit who did have a collection of  
24 records. My understanding that this was a hot button  
25 event that happened in 2004, certainly plenty of people

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have requested records related to it, and they had numerous records related to the RNC including mass arrests, 49s, and after-action reports.

THE COURT: And this was collected by the FOIL unit in response to FOIL requests.

MR. CALLAHAN: Over the course of their history, that's the way I understand it.

THE COURT: Okay. And those are ready to go, they just have to be redacted?

MR. CALLAHAN: Correct, they're being redacted.

THE COURT: Okay. So if you wanted to do a check on the FOIL unit or get anymore, is it the same thing you described before or something else you --

MR. CALLAHAN: I was in the process of doing that. I am in the process of doing that with Occupy Wall Street.

THE COURT: Oh, because they don't have, the FOIL unit didn't come through with you on that?

MR. CALLAHAN: Not yet.

MS. WEISS: And if I may, Your Honor, I just want to remind the Court that Occupy Wall Street demonstrations took part over the course of nearly two years, and unlike the WEF which was a week and RNC which was essentially a weekend, Occupy Wall Street had a number

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2 of different dates of large demonstrations where there  
3 were mass arrests. So it's possible that there were FOIL  
4 requests for a specific date, but I don't think that, and  
5 I could be wrong, but I don't think that a request could  
6 be made to the FOIL unit to produce everything from Occupy  
7 Wall Street. We would have to give them the dates of the  
8 demonstrations.

9 MR. CALLAHAN: That's correct, and maybe even  
10 the request --

11 (interposing)

12 MX. GREEN: I think we're getting ahead of  
13 ourselves.

14 MR. CALLAHAN: Well, yeah.

15 THE COURT: Because we haven't finished with  
16 RNC, Mx. Green, is that what you're saying?

17 MX. GREEN: Yeah, exactly.

18 THE COURT: Okay, so I guess the question  
19 becomes what are you doing, Mr. Callahan, in addition to  
20 whatever you're producing from the FOIL unit? Are you  
21 doing something? What's the proposal? Maybe it's a  
22 question for Ms. Weiss. I mean what's the position --

23 MR. CALLAHAN: As it relates to which records?

24 THE COURT: 2004 RNC. Beyond the FOIL, I know  
25 the FOIL unit sounds great, sounds like a good thing to



1  
2 do. I --

3 MX. GREEN: Mr. Callahan, is the set of  
4 documents --

5 MR. CALLAHAN: Also discussing it with  
6 Lieutenant Czark and CJB.

7 MX. GREEN: Sorry, is the set of documents you  
8 found from the FOIL unit, the pre-collected and pre-  
9 redacted ones, or are they as produced under FOIL?  
10 Because I think that that, you know, on one hand that  
11 would make them very easy to produce because they're  
12 already public records and there's no even colorable  
13 objection to just immediately producing them. But, on the  
14 other hand, that there are, there are ways that you can  
15 redact things under FOIL that don't apply in civil  
16 litigation. So, you know, on one hand, on the other, if  
17 they are the redacted versions, we should be able to get  
18 them tomorrow. On the other hand, I don't know that  
19 that's going to be perfect or even correct because a lot  
20 of things get redacted for interagency privilege under  
21 FOIL that shouldn't be in civil litigation.

22 MR. CALLAHAN: I don't have an answer to your  
23 question.

24 THE COURT: You don't know whether the FOIL  
25 unit is giving you redacted or unredacted --

1 (interposing)

2 THE COURT: -- produced it --

3 MR. CALLAHAN: I just haven't reviewed the  
4 records. I just haven't reviewed them, and I did not ask  
5 them that question when they provided it to me.

6 THE COURT: Okay. So, Ms. Weiss, if they have  
7 a set of documents as produced to a member of the public,  
8 zero chance of any privilege or any objection. So those  
9 should just be produced immediately.

10 MS. WEISS: Just in as long a time as it takes  
11 to get them on our system and then (indiscernible) with  
12 Bates numbers and such.

13 THE COURT: Yes. Yes. I mean I assume  
14 (indiscernible), hours or days, not weeks.

15 MS. WEISS: (inaudible)

16 THE COURT: Okay, so let me just try to figure  
17 out what we're going to do - so, Mr. Callahan, you said  
18 you were still trying to look for 49s, mass arrests, what  
19 they're calling after-action reports for this or not?

20 MR. CALLAHAN: I believe you asked if I was  
21 searching anywhere else, and my response was I did also  
22 speak about the RNC with Lieutenant Czark earlier today.

23 THE COURT: And?

24 MR. CALLAHAN: So I have (indiscernible) or  
25

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2 CJB, excuse me. I think I said this before, there are

3 mass arrest reports dating back to the RNC and 2003.

4 THE COURT: And this forms the hundred boxes?

5 MR. CALLAHAN: No, this was an electronic

6 collection where I met with Lieutenant Czark earlier

7 today. He showed me a shared drive location that Mx.

8 Green referred to earlier.

9 THE COURT: That he's maintained what on? Or

10 someone's maintained what on this shared drive?

11 MR. CALLAHAN: Mass arrest reports, excuse me.

12 THE COURT: Just the mass arrest reports.

13 MR. CALLAHAN: And other related MAPSI

14 (phonetic) records, whether they're --

15 THE COURT: Other related what records, I'm

16 sorry?

17 MR. CALLAHAN: Mass arrest processing

18 (indiscernible) records, so administrative records that

19 they might have, instructions, what have you.

20 THE COURT: Okay. So that's something that's

21 going to be readily available then?

22 MR. CALLAHAN: Yes. It just needs to be

23 reviewed for responsive, what, in fact, is responsive.

24 MX. GREEN: Well, let me perhaps make this

25 easier. I think if we aren't getting the other

1 administration records, we're going to send a request for  
2 them. Perhaps the best thing to do is to cross out mass  
3 arrest reports from everything remaining because it sounds  
4 like everything through the present is pretty easy.  
5 Unless there is some objection to burden after that.  
6

7 THE COURT: Mx. Green, let me just - I didn't  
8 quite follow. So the theory is that these mass arrest  
9 reports are --

10 (interposing)

11 MX. GREEN: They're all in one digital folder.

12 THE COURT: That Lieutenant Czark knows about.

13 MX. GREEN: Yes. And it sounds like what Mr.  
14 Callahan has said is that they don't have the stuff from  
15 2002 in there, but everything 2003 and after is in that  
16 folder. And so I think our request, if they are going to  
17 withhold something on responsiveness, we'll serve today a  
18 request asking for the contents of that folder. And I  
19 would hope we can just skip ahead to it's not burdensome,  
20 there is some redaction that might need to take place of  
21 those documents, but otherwise we'll get them. And we can  
22 cross mass arrest reports off of every remaining protest.  
23 THE COURT: Okay, except it sounds like you  
24 want mass arrest reports that don't relate to these  
25 protests if they're in there, is that what you're saying?

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MX. GREEN: I think that the answer is we have every year covered, and I don't, you know, we have in response to an interrogatory, we have a list of every time between 2000 and the present that a mass arrest center was opened. I don't - if they have been opened outside of these protests, it's been a very limited number of times, and, you know, yes, if there is something from a different, from a (indiscernible) protest, obviously it's not relevant, and I don't know that we really have too much objection to not getting that. But I think the contents of that folder are almost one to one with this request if you take it through all the protests.

THE COURT: Okay. So, Mr. Callahan, what's the status of that folder? Have you - how many - it's in electronic form and you're reviewing it or what's going on?

MR. CALLAHAN: Yes, so it's collected and it needs to be reviewed.

THE COURT: Okay, and what's the volume, do you know?

MR. CALLAHAN: I do not. I do know from Lieutenant Czark that it contains CJB and MAPSI materials from 2003 to the present.

THE COURT: Okay. All right, so let's put, I'm

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going to - by the way, the presumptive date for production of all of these is March 11. That was the month from --

MX. GREEN: Thirty days from --

THE COURT: -- last week. Yeah. So that's going to be the date unless someone prevails on me otherwise and successfully prevails on me otherwise.

Okay, so what do we do - Mx. Green, I don't know, what do we do now about 49s and after-action reports? What's --

MX. GREEN: I mean it's pending kind of knowing whether or not there are, you know, whether we're talking about the actual documents or sheets of paper covered in black. It sounds like we found a way to do it.

THE COURT: The FOIL unit.

MX. GREEN: Right, exactly. It sounds like we found a way to do everything but deposition and CCRB/IAB. And maybe the best thing to do is if it turns out that we don't, that everything's redacted, then that's kind of a guide to what we need to collect otherwise anyway.

THE COURT: In other words, if you're getting post-redaction FOIL material?

MX. GREEN: Exactly, right, and, you know, based on extensive experience with FOIL materials, I would expect these kinds of materials to be almost entirely

1 redactions. But at the very least --

2 THE COURT: I can't believe a FOIL unit would  
3 not keep both the pre and post-redacted materials because  
4 it just seems crazy not to.  
5

6 MX. GREEN: I would hope so too, and so, you  
7 know, which is why I'm saying let's see what we're  
8 getting. I think that that's, we can call that done for  
9 today.

10 THE COURT: Okay. Mr. Callahan, if this FOIL  
11 material is redacted with anything other than, you know,  
12 someone's name and arrest number or something like that,  
13 Ms. Weiss, you need to tell us immediately. Okay?  
14 Because right now we're relying --

15 MS. WEISS: Sure, Your Honor.

16 THE COURT: -- on FOIL for this.

17 MS. WEISS: Absolutely, Your Honor.

18 THE COURT: You tell the other side  
19 immediately, and then they can tell me. Okay, so now we  
20 have to talk about --

21 MX. GREEN: Deposition --

22 (interposing)

23 THE COURT: -- deposition transcripts and CCRB,  
24 okay. So what is the story --

25 MX. GREEN: (indiscernible)

1  
2 THE COURT: Yeah, what's the story with  
3 deposition transcripts?

4 MS. WEISS: Your Honor, we produced, a few  
5 weeks ago we produced a large number of deposition  
6 transcripts. Mx. Green indicated that she thought they  
7 were not all there. When we spoke on Wednesday,  
8 plaintiffs' counsel pointed out specifically some that  
9 they knew should have been there and were not. I went  
10 back to speak with my colleague who was in charge of the  
11 RNC cases and who had told me where the transcripts would  
12 be, and at some point in our conversation, we realized  
13 that the paralegal who took care of archiving and filing  
14 the RNC cases had electronically filed some other  
15 deposition transcripts in another place.

16 I have since spoken with him. He gave me the  
17 ones that we knew specifically were outstanding, and I now  
18 know where to find the rest. I have not been able to do  
19 that yet because I've been doing other things on this  
20 case. But I will be able to review, look through and pull  
21 the rest of the transcripts early next week to get them to  
22 plaintiffs.

23 With respect to any exhibits --

24 THE COURT: Ms. Weiss, Ms. Weiss.

25 MS. WEISS: Yes, Your Honor.



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THE COURT: Ms. Weiss, could you please ask Ms. Pistata (phonetic) to give you someone that could look through boxes or whatever for transcripts so that you don't have to do that because you have a lot of other things you have to do as managing this case?

MS. WEISS: I can certainly ask, Your Honor, and hopefully --

THE COURT: I thought you - I'm being a little tongue in cheek, Ms. Weiss, because you had led me to believe that there were up to nine attorneys working on this case. It's hard to believe that this should be, first of all, it's hard to believe it's an attorney function. I'm just worried about the staffing of this case when you tell me that the deposition production depends upon you searching through files.

MS. WEISS: I will ask and try to find support staff who can do that.

THE COURT: All right, I interrupted you, go ahead.

MS. WEISS: (indiscernible) exhibits. So I know that plaintiffs' counsel were also asking for exhibits for these depositions. They are electronically in our office. They were put on a separate database which has since been closed out. It may be possible to have

1  
2 that database reinstituted. We don't know yet, but even  
3 if we were able to, it would cost several thousand  
4 dollars. Otherwise, any exhibits would be archived, and  
5 it would be much the same process that we spoke about  
6 earlier --

7 THE COURT: Well, do you know - did they not  
8 archive - well, tell me about it. How many boxes, do we  
9 know which, can you order up the boxes with just the  
10 exhibits? Is it indexed that way?

11 MS. WEISS: It's indexed better than the WEF  
12 cases, but I do not believe from what I understand, I have  
13 not looked at the indexes myself, but it's upon  
14 conversations, they're not, there's no box that is  
15 specifically deposition exhibits. There might be  
16 somewhere there's a small folder of some deposition  
17 exhibits, but they're not organized in any way that, you  
18 know, if we have Chief Monahan's deposition, that there's  
19 a corresponding folder with the exhibits from that  
20 deposition. And there are several hundred boxes.

21 MX. GREEN: Your Honor, I think it may make  
22 sense to find out what the exact price is. Because if  
23 it's several thousand dollars, let's call that 3,000 or  
24 4,000, I mean in terms of attorney time on these two  
25 conferences and the meet and confer this week, we've

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easily cleared that number. If that's, you know, if that's what the impediment is, I think if they - it's a very good use of money to spool up that database. It also strikes me that, you know, I cannot imagine not backing up a database to a useable form for cases that are not, are less than seven years old.

THE COURT: Whoa, whoa, whoa. This is the two thousand - I thought we're talking about RNC.

MX. GREEN: We are talking about RNC, but I mean much of the, I think the RNC litigation went on for ten years. So we're within seven years of when it ended.

THE COURT: All right, Ms. Weiss, get an exact quote for what it would cost to get this and let the other side know, and then if you disagree about what to do, bring it to me.

MS. WEISS: Yes, Your Honor.

THE COURT: I mean do that, you know, in the next week.

MS. WEISS: Okay.

THE COURT: Okay, CCRB and IAB records.

MS. WEISS: With respect to CCRB, it's essentially going to be the same as I discussed for - the database is not easily searchable. These documents at the time were not even originally in - I think part of the

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problem arises that these documents were not originally on an electronic database and were put on one later. I'm not a tech person, but I think that that interferes with the searchability of them.

THE COURT: I'm sorry, you need to say what you said again. Do we have the same answer for the CCRB and the IAB records which is the belief that it can't be searched by date?

MS. WEISS: I'm speaking just as to the CCRB records which is not something that the NYPD can speak to.

THE COURT: I --

MX. GREEN: Your Honor, I think this is something where we just need to talk to the relevant people. There was a letter that the CCRB sent talking about 63 specific cases when the NYPD I believe declines to discipline many of the officers involved in the various crackdowns during the RNC, you know, I just find it, frankly, impossible to believe that they don't know exactly where those 63 case files are. You know, there's a Times article about it that you can just Google.

THE COURT: Okay, well, this falls in the category of if you find out a representation is wrong, Mx. Green, then whatever I order, if it's not favorable to you, you can come back to me on.

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2 MX. GREEN: Understood.

3 THE COURT: Okay. IAB. Same problem as  
4 before?

5 MS. FITZPATRICK: Yes. It would be the - it's  
6 the same database that I discussed previously would be the  
7 one that we would have to search. Then we would find the  
8 logs, and then we would have to order the paper case  
9 files.

10 THE COURT: Okay, and you say you can't search  
11 it by, you think you can't search it by date of incident.

12 MS. FITZPATRICK: I don't believe so, no.

13 THE COURT: Okay, well, you need to confirm  
14 that, and then if it's incorrect, tell Ms. Weiss  
15 immediately.

16 MS. FITZPATRICK: I will.

17 THE COURT: And --

18 (interposing)

19 MX. GREEN: And, Your Honor.

20 THE COURT: Yep.

21 MX. GREEN: I think the other thing we ought to  
22 do on that is search by reporting - if you can only search  
23 by reporting date, then maybe search, I don't know, six  
24 months after the RNC or six months after the World  
25 Economic Forum and see what the volume is. Because if the

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2 volume is low and we get, as Ms. Fitzpatrick suggested, a  
3 summary of the cases, and let's say we only get 30 cases  
4 in six months, maybe that's not true, but, you know, if  
5 it's somewhere below, you know, a hundred cases or  
6 somewhere below 200 or 300 cases, I don't think it would  
7 take particularly long to just look at the, what I think  
8 was described as a one-paragraph summary and figure out if  
9 it was protest related.

10 MS. WEISS: Respectfully, Your Honor, looking  
11 through six months of IAB files, even if it's just that  
12 one page, is a Herculean task.

13 THE COURT: All right, let's just move on.  
14 Okay, so now we're on Occupy Wall Street. We had this,  
15 we're already dealing with mass arrest reports in the same  
16 way as with, through this Lieutenant, is that correct?

17 MX. GREEN: I believe so, Your Honor.

18 THE COURT: Okay.

19 MS. WEISS: That would be correct.

20 THE COURT: And same thing for 49 and after-  
21 action reports. So now we're on to deposition  
22 transcripts, right?

23 MS. WEISS: Yes, Your Honor. So I happen to  
24 have been the attorney in charge of the Occupy Wall Street  
25 cases, so I have a lot of personal knowledge regarding

1  
2 them, and these, probably 90 percent of the cases are now  
3 in archives. I believe there's only two active cases  
4 left, and those files are obviously in our office. I  
5 happen to know that only a small portion of the deposition  
6 transcripts were saved electronically in our system.  
7 Those are easy to produce. I believe I produced most if  
8 not all of them, and I can (indiscernible) they're also  
9 each categorized rather than as a general Occupy Wall  
10 Street type file, are each by their own case, and there  
11 were approximately 100 cases.

12           So while looking through those electronic files  
13 on those hundred cases is a big job. It's certainly  
14 something that we have been doing and can continue to do  
15 and hopefully whatever support staff I can hopefully find  
16 to help out with the RNC depositions can help out with  
17 this. We'll give that a shot.

18           The ones that are not electronic and are in  
19 archives are going to be time-consuming and burdensome to  
20 collect, bring back, look through the boxes, and find the  
21 depositions. There's at least I would have to say, you  
22 know, 90 different cases in archives, and all of the  
23 cartons for all of the cases would have to be brought in  
24 and looked through because the files are not indexed in  
25 any way in archive. They're just simply archived by the

1 case name.

2  
3 And that would go for - in a way that would go  
4 for exhibits because not all of them would be on our  
5 electronic system. It's possible some are. I know that  
6 there are some where an attorney happened to file  
7 deposition exhibits under separate electronic files called  
8 deposition exhibits, but I would say that that happened  
9 maybe 5 percent of the time. So it would require going  
10 through the depositions, picking out the exhibits, and  
11 then looking for the actual exhibit in the electronic  
12 file. And it might not even be there. It only might be  
13 in paper form. So finding most of the deposition  
14 transcripts is not overly burdensome. Anything more than  
15 that really starts to put the burden on.

16 And then, you know, the burdensomeness on all of  
17 this becomes cumulative because there's so much to go  
18 through and so much to attempt to locate, that things that  
19 are burdensome and less important, you know, if we're  
20 required to locate and produce them, just makes it all the  
21 most difficult to find the things and take more time to  
22 find the things that are more important.

23 THE COURT: All right, we're in the same place  
24 on CCRB and IAB records.

25 MS. WEISS: Yes, Your Honor.



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2 THE COURT: Mx. Green, anything on this before  
3 we get to the current --

4 MX. GREEN: No, I think --

5 THE COURT: -- 2020?

6 MX. GREEN: If it's the same stuff, it's the  
7 same stuff, you know, I think that that covers it.

8 THE COURT: Okay. I'm surprised BLM is on our  
9 prior protest agenda just because that's the current  
10 protest, as it were.

11 MX. GREEN: Yes, Your Honor, although I think  
12 BLM protests started in 2013. So, you know --

13 THE COURT: Oh, I'm sorry, we're not talking  
14 about, we're not talking about 2020.

15 MX. GREEN: Well, I think in this chart they  
16 are lumped together, and, frankly, in our requests they  
17 were lumped together perhaps - well, we had framed it as  
18 basically, you know, the requests here were about  
19 everything through the start of the summer 2020 protests,  
20 and separately elsewhere we requested the same documents  
21 for the current protests.

22 THE COURT: Okay --

23 (interposing)

24 THE COURT: Is Lieutenant Czark getting mass  
25 arrest reports from old BLM protests, Mr. Callahan? His

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just goes through the present. He doesn't care what the protest was as long as it's mass arrests, right?

MR. CALLAHAN: His file includes dating back to 2003. Any time the mass arrest centers were activated and handled arrests, there would be a relevant or related mass arrest report for them. So, yes, for 2013 through '20 I would expect at least some reports for BLM-related demonstrations.

THE COURT: Okay, well, so then we're - it's all the same for the rest of this, I mean I think we're now repeating ourselves. I guess we could talk about depositions for the --

MS. FITZPATRICK: Oh, Your Honor --

THE COURT: -- for the past BLM --

MS. FITZPATRICK: I apologize. With regards to IAB the system changed in 2012. There's a different database that is currently used, and the files are digital. That's the only difference.

THE COURT: Okay, and can we - and can we search by date?

MS. FITZPATRICK: Let me just - my search functionability is very limited. I believe that they can in the new system by date of occurrence, but I will confirm that as well with IAB records.

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2 THE COURT: Mx. Green, you would need to supply  
3 those dates of the --

4 (interposing)

5 MX. GREEN: Yes, and to make things easy, it's  
6 what defendants responded, the dates would be the dates  
7 defendant answered our interrogatory 14.

8 THE COURT: Okay.

9 MX. GREEN: Which are all the dates that the  
10 mass arrest processing center was open.

11 THE COURT: Okay, I don't think we heard about  
12 depositions. What's going on with that, Ms. Weiss?

13 MS. WEISS: Sorry, Your Honor. There were not  
14 a tremendous number of lawsuits for these prior Black  
15 Lives Matter protests. The ones that I've certainly been  
16 able to learn were definitely Black Lives Matter protests  
17 I requested to find out where the transcripts are. They  
18 should be electronic. Part of the problem is knowing  
19 exactly which were considered Black Lives Matter protests.  
20 It's really a matter of asking around the office. So in  
21 the process of doing that, I haven't completed that yet.

22 THE COURT: So you're doing a survey of current  
23 attorneys to know the answer to this question.

24 MS. WEISS: And I'm having one of our support  
25 staff try to go through, not try to, but go through one of

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our systems to see if there's notations that, a specific case in the Black Lives Matter cases, there's no definite code for that, but he's working on figuring that out.

THE COURT: All right, Trump Car Caravan. I guess we're in the same place with that. There's no deposition transcripts, so it's whatever.

MX. GREEN: Yeah, Your Honor, for these I'm just kind of shocked to see the ten-hour numbers because, you know, there was no MAPSI. They told us that in interrogatory 14. I don't think there are any 49s because there was no enforcement action. I don't, yeah, I certainly don't think that any CCRB files have been opened. I don't understand how they can say it would take ten hours for any of these categories.

MS. WEISS: Well, because your telling us, Mx. Green, that there was no enforcement action, there were no CCRB's. We can't go on your word. We've got to do the searches to make sure. If it turns out that there wasn't, then there wasn't, but we need the time to do the searches.

THE COURT: Okay, let's not worry about this. Okay, so I am pretty much in a position to make rulings about what they have to do and what they don't, and I said I'd give each side a chance. So if there's anything more,

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2 I mean, Mx. Green, you want to say about burden? You've  
3 been saying to some degree all along, I've been --

4 MX. GREEN: Yes.

5 THE COURT: -- listening and taking notes. I  
6 guess if you want to redo, reprise Judge Dolinger, that's  
7 fine. So anything you want to say now is fine, and I'll  
8 hear from Ms. Weiss, and then I'll try to give a --

9 (interposing)

10 MX. GREEN: Sorry, Your Honor, I think there's  
11 one thing that we kind of slid past fairly given the  
12 structure of this report which is 49s for the current  
13 protests, which have a storied history. The Court had  
14 ordered defendants to produce samples of them way back in  
15 June. We've never gotten those samples. The explanation  
16 has been ever shifting as to why we don't have the samples  
17 and what, you know, whether they exist at all. But I  
18 think that's something we should cover here today because  
19 it's teed up.

20 THE COURT: I guess I wasn't sure it was teed  
21 up. I assumed we were just talking about past protests  
22 before 2020.

23 MX. GREEN: I think that is certainly part of  
24 where we started, you know, I think this is part of what  
25 we - it's in our letter for better or worse. It's in

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defendants' response for better or worse. We would have  
to meet and confer --

THE COURT: Okay, what's - what's the issue on  
the 49s for the 2020? It's the 49s for the 2020 protests,  
is that what we're talking about?

MX. GREEN: Correct.

THE COURT: Okay, so what's the issue then? I  
don't recall it from the letters, but I've had, you know,  
dozens of letters in front of me, so it's not a surprise.

MX. GREEN: Understood, Judge. I mean the  
issue is that when we were first in front of you in June,  
you told defendants that something wasn't making sense,  
that's a quote, about their response to, or their  
objections and directed them to produce a couple samples  
of what they were going to be producing and what they were  
going to be withholding. Aside from --

THE COURT: As to what? As to, quote, "49s"?

MX. GREEN: As to, quote, "49s."

THE COURT: Okay, go ahead.

MX. GREEN: They never did that. They didn't  
seek relief from the order. They just didn't do it. What  
ended up happening is they then said that they had  
conducted a diligent search and believe that they didn't  
exist. That seemed wrong to us, but we didn't have

1 anything to rebut it with.

2 What happened at one of the meet and confers is  
3 Ms. Fitzpatrick had asked Ms. Weiss or had told Ms. Weiss,  
4 oh, you don't need to send me a 49 for that. And so what  
5 defendants have said is we don't think that the NYPD uses  
6 49s anymore. We are certain that's not true now.

7 Additionally, in the email production we have an  
8 email, this has been marked confidential. It's Bates  
9 number DEF\_E\_ED\_, and I'm skipping the leading zeroes,  
10 100310. Without revealing any of what - I don't think  
11 that the confidential marking is correct in the first  
12 place, but I don't think, I am certain that this is not  
13 what's confidential about it. It basically directs  
14 somebody to send me all the 49s related to a list of  
15 protests. So I think --

16 THE COURT: (indiscernible) it was me. You,  
17 Mx. Green?

18 MX. GREEN: No, it's a member of the NYPD.  
19 It's a Peter Simonetti.

20 THE COURT: Okay.

21 MX. GREEN: But, you know, the idea that there  
22 were not 49s related to the summer 2020 protests is  
23 clearly wrong. And so, you know, we still don't know what  
24 defendants are going to do to collect them, and, you know,  
25

1 we're well out from a court order saying you need to  
2 figure out what's going on with this. And, you know, I'll  
3 just quote from an email from defendants. "The  
4 information provided in yesterday's letter was what our  
5 client told us and the research our client did and how  
6 they looked for those. So if the documents don't exist I  
7 don't know what more you're looking for." And that's kind  
8 of where we left it. But the documents do exist, and so  
9 we need to get them.

11 THE COURT: All right, Ms. Weiss.

12 MS. WEISS: Your Honor, there was a lot of  
13 confusion throughout this litigation about 49s. In fact,  
14 a 49 is, it was an old name for an old document that's not  
15 even used anymore. A lot of members of the NYPD still use  
16 that terminology when they're referring to these to/from  
17 memos. It was our understanding at first that plaintiffs  
18 were seeking 49s or memos that - this is very, very broad,  
19 and we were trying to get them to narrow it down to find  
20 out if it was after-action report type reports or exactly  
21 what it is. And there was a lot of back and forth over  
22 the months, and it was never resolved until very recently  
23 where we were told that they want every single to/from  
24 memorandum, every single communication.

25 THE COURT: Can I just cut through this? I



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can't believe anyone is sending paper memos anymore.

Wouldn't your email production have covered all this?

MS. WEISS: No, as a matter of fact, as I think Mx. Green said, in the email productions there were a lot of to/from type memos, and they would have absolutely been captured in the email production that we provided.

Because, yes, things were --

(interposing)

THE COURT: Mx. Green, I just don't understand. I mean --

MX. GREEN: Your Honor --

(interposing)

THE COURT: -- anyone puts anything on paper.

MX. GREEN: So, Your Honor, the problem with that is because, you know, of defendants' complaint about burden, we limited our collection of emails to I think literally two weeks. That's obvious, you know, that's obviously not the full span of these things, and with the understanding that certain kinds of documents, even though they are electronically stored, will be collected another way, like 49s that are kept, you know, in a folder or that's, for example, in the email I read, somebody somewhere in the PD has all the 49s sent to them and files them. The fact is that we --

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2 THE COURT: How about this guy in the email,  
3 sounds like he got them?

4 MX. GREEN: I agree. I think that he is one of  
5 the people we need to call, that defendants need to call  
6 and collect the 49s from.

7 THE COURT: Mr. Callahan, is the magic  
8 lieutenant perhaps have all these?

9 MS. FITZPATRICK: Your Honor, I believe Mr.  
10 Callahan --

11 THE COURT: I'm not saying that facetiously by  
12 the way. I truly think he's magic. Lieutenant Czark.

13 MS. FITZPATRICK: I believe Mr. Callahan had to  
14 step off the call. He had another commitment.

15 MR. CALLAHAN: I'm still here, but, no,  
16 Lieutenant Czark would not be the correct person for that.

17 THE COURT: It's too late for him?

18 MR. CALLAHAN: I can't say --

19 THE COURT: He's an archivist, he doesn't do  
20 the --

21 (interposing)

22 MR. CALLAHAN: He works in criminal --

23 THE COURT: In any event, how do we find the  
24 equivalent of the 49s for the 2020 protests? I don't mean  
25 49s. I mean memos about what happened.

MR. CALLAHAN: At the time Chief of Department Operations Division was the main custodian for keeping detailed requests, sending out those, quote/unquote, "49s" that detail the MOS that are needed.

THE COURT: Is there someone who's likely to have all of these for 2020? I mean for that period in 2020. I gather it's just a couple of months.

MS. FITZPATRICK: Your Honor, if I may, I think some of the confusion may lie in the fact that, as Ms. Weiss was trying to express to you. It wasn't too clear to us, or at least it wasn't clear to me, what exactly we were, they were looking for, the plaintiffs. Originally, they started talking about unusual occurrence reports which are also in the form of a to/from memo which also is referred to as an unusual occurrence 49. Based upon the patrol guide, those types of reports aren't necessarily going to be generated for a large scale protest. So that's where some of the confusion may lie.

Additionally, I think that the Department does have a rather antiquated way of communicating, so there are quite a few people who still rely on paper and paper does go through channels and go through what we refer to colloquially as snail mail. And there are log books with communication numbers. So it's - searching for them is

1  
2 not very simple necessarily because the log books are  
3 actual log books are maintained at the commands where the  
4 49 originated from and then also at the commands where the  
5 49 is going to. So that's one of the reasons why it's a  
6 bit more complicated than one might think because of the  
7 way --

8 MX. GREEN: Your Honor --

9 MS. FITZPATRICK: -- the Department handles  
10 communications.

11 MX. GREEN: Let me just jump in if I may to say  
12 I don't think there's any confusion on our end. We have  
13 been very clear that we want all of it. We want the  
14 communications. We want the memos. Our document requests  
15 use all of the terms because we know that everybody uses  
16 them. And when defendants made this argument in front of  
17 you on this motion in June, you said something was not  
18 making sense about their argument and ordered them to  
19 produce samples, which --

20 THE COURT: All right, all right, and then  
21 their claim is that they don't exist, that's why they're  
22 claiming they didn't produce them. Right? I'm not saying  
23 they're right, but --

24 (interposing)

25 MX. GREEN: Later they claimed that, but then,

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you know, as Ms. Weiss said, 49s are in the email productions. It's clear that's just not true.

THE COURT: I think 49 is wasting our time. We need to use the term memo. Okay?

MX. GREEN: Sure.

THE COURT: And let's talk about content. I don't care if they call it a 49 or they call it to/from or a memo or anything else. The content is some kind of I gather pre-protest plan or is it post-protest? What is it exactly? Tell me content-wise what it is.

MX. GREEN: It could be all of the above and a few other things. It's --

THE COURT: Okay.

MX. GREEN: But we can send you samples if there's some confusion. We have --

THE COURT: I don't - we just need to figure out a way, what's the best way for Ms. Callahan to find this? Should she go to Simonetti and say, gee, you've got all the 49s, give us your collection? Should she send an email to a certain group of people saying give me any reports - well, give us an idea of what you think should be done.

MX. GREEN: After the meet and confer we sent a list of nine commands. We think that somebody at NYPD

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2 should call all nine of those commands and say how do you  
3 keep your 49s or how do you keep your memos, sorry. And -  
4 -

5 THE COURT: About planned large-scale protests.

6 MX. GREEN: Well, I think the question should  
7 be --

8 THE COURT: About these protests --

9 MX. GREEN: -- general --

10 THE COURT: About these protests.

11 MX. GREEN: Right, but I think the question  
12 should be, should move from general to specific, right, it  
13 should be how do you keep these, okay, are the ones from  
14 protests in anywhere special or what do we have to do to  
15 figure out which ones are from protests.

16 THE COURT: Okay. Ms. Callahan, but, again,  
17 we're trying to - this came up because we're trying to  
18 find the 2020 protest memos, right?

19 MX. GREEN: Correct.

20 THE COURT: Okay, so that's what I want to ask  
21 Ms. Callahan, how do we find those. If someone wrote a  
22 memo about these protests, how do we find them?

23 MS. FITZPATRICK: Your Honor, there's a couple  
24 of different ways we could go about it. I think our plan  
25 now would be, and Ms. Grego who's also on the call might

1 be the better person to speak about this because this  
2 falls within her wheelhouse. But basically there are  
3 shared drives, and we would go to these eight commands and  
4 we would speak to them about their shared drives and if  
5 they have 49s saved in their shared drives. And if we can  
6 review them and if they are related to the protests in any  
7 way, either a pre-action plan like a detail report, as Mr.  
8 Callahan was referring to, or something like an after-  
9 action report, then that would be one way to go about it.  
10

11 Another way is, as we did point out, as Ms.  
12 Weiss pointed out, that there are a lot of these were  
13 produced as attachments in emails because there are some  
14 people in the department who do use the email more than  
15 others. So that would be another way to go about it.

16 THE COURT: Those would've been produced  
17 already.

18 MS. FITZPATRICK: Correct. Those have already  
19 been produced.

20 THE COURT: Okay. So I heard Mx. Green say  
21 nine commands. Is there a dispute about whether it's  
22 eight or nine?

23 MS. FITZPATRICK: I apologize, I misspoke, Your  
24 Honor, it's nine, yes.

25 THE COURT: Okay, so, Ms. Weiss, it seems like

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absolutely Mr. Callahan should do that right away. Any problem with that?

MS. WEISS: Certainly. Well, there is one problem in that Ms. Fitzpatrick is going to be out of the country next week.

THE COURT: Well, I don't care who does it as long as it all gets produced by March 11. That's your deadline. Okay, so, Mx. Green, we had gotten onto this topic --

MX. GREEN: Yes.

THE COURT: I said to you this is your chance to give any overall statements about burden and so forth.

MX. GREEN: Right, so, Your Honor, I think to use Ms. Fitzpatrick's phrase, the problem here in terms of the burden appears to largely be that systems are antiquated or that NYPD has not archived things in a way where they can retrieve them or, you know, in the instance of the law department, apparently do not organize their past case files by any method other than saying here are all the documents from a case.

I think the case law's fairly clear, right, that there is that case but there are countless others, you know, here is one of my favorites, this is a District of Maryland case called *Kozlowski v. Sears*. The defendant



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2 may not excuse itself from compliance with Rule 34 by  
3 utilizing a system of recordkeeping which conceals rather  
4 than discloses its relevant record (indiscernible) makes  
5 it unduly difficult to identify or locate them, thus  
6 rendering the production of documents an excessively  
7 burdensome and costly expedition. I think the fact is the  
8 only burdens we've heard today amount to NYPD does not  
9 keep their documents in a way where they can easily be  
10 retrieved or in a way where they can easily be searched.  
11 At the end of the day that makes, that amounts to a  
12 perverse incentive.

13 I think part of the reason, I mean the NYPD is a  
14 paramilitary organization. It is an organization that  
15 does need to retrieve certain kinds of information for  
16 certain reasons. It runs counter to their objectives to  
17 make information this difficult to search for. I am not  
18 going to draw the inference from there, but I think the  
19 cases all speak of the perverse incentives that allowing  
20 that to be a cognizable burden creates. And the idea is  
21 if that is a cognizable burden, then everyone, everyone  
22 who fears liability will throw documents in a box where  
23 they never find them again. That's, you know, that sounds  
24 like what defendants are asserting at least some of their  
25 filing systems amount to. That's not okay, and it's not,

1 under the rules it's not a cognizable burden.

2           The other burdens we've heard are things like  
3 calling 17 people, this was in the letter, to figure out  
4 where the documents actually are and what it would involve  
5 to retrieve them. I don't think calling 17 people is  
6 particularly burdensome. I don't think calling nine  
7 people, which is what we've reduced it to, is particularly  
8 burdensome. And, you know, one theme I will highlight,  
9 right, we got a chart from defendants saying that it was  
10 going to take 40, 50 hours to pull together mass arrest  
11 reports. It turns out that the answer, except as to World  
12 Economic Forum, instead is going to take 30 minutes.  
13 There is one folder in one drive, as we've been saying  
14 since June last year, and I don't know how you can file  
15 the spreadsheet they filed when that's true.

16           Beyond there, you know, I think the only other  
17 impediment seems to be staffing. As the Court observed,  
18 Ms. Weiss personally shouldn't be digging through boxes  
19 for depositions. That's, you know, at least a junior  
20 attorney task if not a paralegal task. And, you know, I  
21 know this pretty well because I've had the City criticize  
22 my timesheets when I do things like that. I don't see how  
23 the case is being staffed the way it is, and I don't see  
24 how this is burdensome.

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2 Finally, you know, even taking every assumption  
3 they want us to make, in a case of this size I added up  
4 the numbers. They're talking about 725 total hours if  
5 they're right about everything, and I think we've seen  
6 that many of those things they're not right about. But if  
7 they're right about everything, they're talking about 725  
8 hours to collect, you know, the history of protests in New  
9 York City. In a case of this size, you know, I think that  
10 - if the case is adequately staffed, you can accomplish  
11 that, and it's what they should've been accomplishing  
12 since, you know, at the very latest July of last year when  
13 they sent us an email saying we are going to produce  
14 documents from the RNC and back.

15 If they had actually started this in July when  
16 they agreed they would be producing or in August when they  
17 agreed they would be producing, we would not be here  
18 today. The only reason where here today is because we,  
19 because - and this is, I find it unfathomable - because  
20 they did not even have the index Wednesday. Today or  
21 yesterday appears to be when they got the index to the  
22 boxes. And despite that Ms. Weiss in the first appearance  
23 on discovery was telling the Court that they were going to  
24 be going through boxes from the World Economic Forum. We  
25 quoted that in our letter. I just - it shocks me, and I

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don't know what else to say, so I won't say anymore.

(pause in proceeding)

MX. GREEN: I'm sorry, did I love everybody?

MS. FITZPATRICK: I'm still here.

THE COURT: I'm the one who was on mute, I'm sorry. I've been talking all this time, and now I'm the one who's guilty. Ms. Weiss.

MS. WEISS: Thank you, Your Honor. I think that the one that Mx. Green has been forgetting throughout which (indiscernible) been saying the proportionality argument. So burdensomeness in and of itself is one thing, but when you add it in with proportionality, it takes on a whole new meaning. And are documents from 20 years ago proportional to the needs of the case when taking the burden of finding them into consideration, and the answer to that is no. We had spoken quite a while ago about trying to produce documents from the RNC forward, and that's a little different because Judge McMahon specifically referred to protests going back to the Republican National Convention. So while there is definitely a burden associated with locating a lot of those documents, it may be a little bit more proportional to the case.

No one, neither the City Law Department nor the

Police Department are trying to conceal any documents or purposefully file them in a way that they're difficult to find. But they're old documents. They're not recent documents, they're not seven-year-old documents, they're not even ten-year-old documents. They're 18 and 20 even 10, you know, more than 10 years old. So it's not surprising that they've been archived and put away. And while they are accessible hopefully, they are difficult to get and time-consuming and burdensome.

And I just want to correct something that Mx. Green said. We never argued that making phone calls to these people or these commands is in and of itself burdensome. The cumulative effect of everything that needs to be done, we're simply doing one thing and the burden would certainly be left in having to go to and speak a lot of different people at a lot of different places and trying to get the right people who know the information, especially when some of these incidents were so long ago and there are very little if any members of the NYPD still around to ask about the documents.

Finally, I just want to make another comment on the City's staffing. There are enough staff certainly to be able to litigate these cases, but when I think Mx. Green she added up 750 hours, when that is put on top of

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the depositions that we are going to be defending in the next couple of month and other discovery responsibilities with respect to some of the more newly consolidated cases and preparing for the class action motions are going to be coming up and everything else having to do with litigating this case, it becomes what might not have been overly burdensome before, certainly becomes burdensome now.

THE COURT: Mr. Callahan, are you still on the line?

MS. WEISS: No, I think Mr. Callahan did, in fact, finally jump off.

THE COURT: All right.

MS. FITZPATRICK: Your Honor, this is Ms. Fitzpatrick, I would like to add just one point if I may.

THE COURT: Yeah.

MS. FITZPATRICK: So the Department as it was constituted in 2002 is a very different places as it is now, and so to the point of basically saying that we were actively engaging in trying to obfuscate is a bit disingenuous because the facts of the matter is is the Department has constantly been moving forward to improve its recordkeeping and to digitize as many records as we possibly can. So that's why the further on we go in the timeline, it's much easier for us to find documentation.

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So it's a bit disingenuous to say that the Department is engaging in some sort of tactic to make it difficult to find documents. It's, in fact, the exact opposite.

THE COURT: All right. So I'm going to - unfortunately, I had a lot of information thrown at me. I'm going to try to go through this, and I may need people's help to remind me.

Ms. Callahan, you work with, I'm sorry, Ms. Fitzgerald, Fitzpatrick, you work with Mr. Callahan, right?

MS. FITZPATRICK: Yes.

THE COURT: Or are you in a different unit?

MS. FITZPATRICK: Well, I run the civil litigation unit, Your Honor, which is litigation support for the entire law department, entire NYPD. Mr. Callahan is assigned to the police action litigation section which is another section of the legal bureau. We work together, and we have been working together very closely on this case.

THE COURT: Okay. So I'm just trying it decipher my notes about 2002. Let me just say that I adhere to my view that this is very attenuated from the current protest. There have been other protests in the meantime, and I certainly am prepared to accept that there

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2 is potential relevance of the 2002 protests, but that's a  
3 far cry from doing what I believe to be burdensome  
4 searches.

5           Actually, before I get to that, I am not  
6 prepared at this point, based on anything I've heard or  
7 seen in this case, to make a finding that the police  
8 department has created a record system, certainly without,  
9 obviously without any intent, I can't find there was any  
10 intent to obfuscate. The fact is that, you know, you  
11 could look at many city agencies. They suffer from lack  
12 of resources. These are not - that has to be part of the  
13 analysis about where one spends one's money in terms of  
14 putting in systems and so forth. This is not a Fortune  
15 500 corporation that has a lot of choices about putting in  
16 state of the art systems and systems that are easily  
17 searchable. And I think that has to be taken into  
18 account. So I'm not prepared to accept the argument that  
19 there should be some punishment for having a bad system.

20           All right, now going back to 2002, from my notes  
21 what I had understood, and tell me if I got this right, is  
22 that he does, Mr. Callahan said that there was a way to  
23 look at an index to see if mass arrest reports or memos  
24 were listed on the index and that the order of boxes that  
25 would, if it were shown that the box contained that



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2 document. Did I recollect that correctly, Ms.  
3 Fitzpatrick?

4 MS. FITZPATRICK: Yes, Your Honor.

5 THE COURT: Okay. So, in other words, there's  
6 not going to be some order in hundreds of boxes to see if  
7 we can find any of these. If the document appeared, if a  
8 mass arrest report or any memorandum related to a mass  
9 arrest at the WEF appears in index, the box should be  
10 ordered immediately. No, examined immediately. The box  
11 has to be ordered and it has to be gone through and the  
12 document found and produced if it's there.

13 As to deposition transcripts, again, the burden,  
14 given the age of going through a hundred boxes to figure  
15 out if we can find exhibits I find is not proportional to  
16 the needs of the case.

17 On the CCRB and IAB records, I mean we have to  
18 determine for once and for all definitively, Ms.  
19 Fitzpatrick, whether it's searchable by date of incident.  
20 If it is not searchable by date of incident, I'm not going  
21 to require production of CCRB or IAB records. Did you  
22 tell me the IAB records were searchable for 2002 but not  
23 for, I'm sorry, not for the date of the incidents. We  
24 have to establish that one way or the other.

25 MS. FITZPATRICK: Yes, Your Honor. It's

unclear from the way the database is structured and the search functionability of the database, like the way they - the nomenclature in it is not clear to me that it's the date of the incident or the date of the time that it was reported. So I need to clarify that.

THE COURT: Okay, if it's the date of the incident, then you need to search for records that are attributable to the specific date of a WEF protest, and if there are such records, then you - are they findable in a particular box or not?

MS. FITZPATRICK: They would be stored in an offsite facility and be indexed much the same way that the other records that Mr. Callahan spoke of. So it would be on an index and it would either likely be like a case number, most likely by a case number or log number on the index. And then we would pull that specific box and then pull that specific file.

THE COURT: Hold on a second, guys.

(pause in proceeding)

THE COURT: Sorry about that, folks, I have some criminal responsibilities that are still lingering, and it's possible I'll get for about another 20 seconds shortly. But let's keep going.

All right, so anyway that's for 2002. Things

1  
2 become - I think what we need to do is get the answer to  
3 the search, the searchability of those records. I  
4 certainly am not going to have them hold up depositions,  
5 but that doesn't mean we can't do a process where we you  
6 figure out what might be available if you are able to  
7 search by date of the incident. But I'm not going to  
8 require the City to call up, you know, all complaints and,  
9 you know, even for a period of several months just to go  
10 through them to see if there's any particular complaints  
11 about a protest. It's just not proportional to the  
12 subject matter of this case.

13 All right, as to 2004, all right, now we have  
14 the lieutenant's materials, thank goodness. So that's  
15 going to solve a lot of our problems. In terms of the  
16 depositions, I'm not going to require the City to call up  
17 hundreds of boxes from cases to see if we can find  
18 exhibits. So there should be a continuing process on  
19 attempts to find depositions. There should be attempts to  
20 find exhibits outside of the storage area. But hopefully,  
21 you know, the fact - I'm a little less concerned about  
22 that because it seems to me that the files Lieutenant  
23 Czark may have may produce the exhibits that I think  
24 otherwise might have been needed.

25 Same ruling as to the Occupy Wall Street

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deposition transcripts and exhibits.

MX. GREEN: Your Honor, in the interest of a clear transcript, I assume when you say Lieutenant Czark, you also mean that the FOIL unit is tied to what makes the exhibits unnecessary?

THE COURT: Yes, yes, I'm sorry. It was both Czark the FOIL unit.

MX. GREEN: Thank you. Just wanted to be clear on that.

THE COURT: Yeah, I apologize, thank you. And for the past Black Lives Matter protests, Ms. [sic] Callahan is going to undertake the search we talked about among the nine commands. That's certainly perfectly reasonable. And to gather records in that way. Our assumption is that on the new IAB system we'll be able to search by date of incident, and the plaintiffs should supply dates of incident, dates of incidents, so that a search can be made by the City. I'm sorry, the search of the nine commands, that was for the current documents.

MS. FITZPATRICK: That's with regards to 49s, Your Honor?

THE COURT: Yeah, unusual - when I say 49s I mean --

MS. FITZPATRICK: I'm sorry, to/from memos.

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THE COURT: -- memos.

MS. FITZPATRICK: To/from memos.

THE COURT: To/from memos. Now, did you say - the nine commands is for the 2020 protests. For the past protests I think we're relying on Lieutenant Czark to provide what's needed on that. And I think we already talked I think the process being described for getting disposition transcripts and exhibits for the past BLM cases is sufficient, but, again, everything needs to be produced by March 11 on all of these.

Did I - Mx. Green, I know you're not happy. Is the ruling clear? Did I cover everything?

MX. GREEN: Your Honor, I think you'd be surprised with how happy I am with it. But I think everything was clear except that I don't think we said that Lieutenant Czark as 49s. I thought we'd come up with something else.

THE COURT: On what year are we talking about or just in general?

MX. GREEN: The 2013 up until the start of the summer 2020 protests.

THE COURT: Oh, he just has mass arrest reports, is that what you're saying?

MS. FITZPATRICK: Yes.

1 PROCEEDINGS 94

2 MX. GREEN: Yes. I think this was a FOIL, we  
3 were going to --

4 THE COURT: Yes, it was the FOIL people that  
5 had the 49s for 2004, right?

6 MX. GREEN: 2004, and I think either we were  
7 going to ask about that, as the FOIL unit going forward or  
8 perhaps the right thing to do is - I don't know that we  
9 actually ended up drilling down on this for the 2013 --

10 MS. FITZPATRICK: Your Honor, I'm more than  
11 happy to send the 49 to the nine commands that we  
12 discussed previously, requesting whatever they have on  
13 file with regards to 49s, after - to/from memos, after-  
14 action reports, anything like that related to those  
15 protests as well.

16 THE COURT: You mean the 2013 through present  
17 BLM protests.

18 MS. FITZPATRICK: Correct.

19 THE COURT: Okay. It's ironic you used the  
20 word 49, but I'm sure everyone enjoyed it. You said you  
21 were going to send a 49 to them, right?

22 MS. FITZPATRICK: Yes, and I'm going to send  
23 the 49 to them to ask them about their 49s.

24 THE COURT: Okay --

25 MS. FITZPATRICK: I apologize, Your Honor --

1 (interposing)

2 THE COURT: Okay. Mx. Green, anything I left  
3 out?  
4

5 MX. GREEN: I think the only thing was you were  
6 going to, we are supposed to get a cost estimate for  
7 spooling up the old database.

8 THE COURT: Yes, Ms. Weiss, you need to supply  
9 that by this coming Thursday.

10 MS. WEISS: Yes, Your Honor.

11 THE COURT: 24<sup>th</sup>. Okay, can we go on to the  
12 part 2 which I'm not sure how much strength I have for it,  
13 but I just want to make sure we can leave this.

14 MX. GREEN: Yes, Judge.

15 THE COURT: Okay. Part 2 is my effort to put  
16 together what happened last Friday, and some of it's easy.  
17 I just want to recall what I was writing. By the way,  
18 we're not going to get to what I call the prophylactic  
19 proposal which is docket number 394. So we're not doing  
20 that today. If I decide to hold a conference on that, I  
21 will let you know. Or issue an order, I will just issue  
22 an order. But I am, as I said, putting together what  
23 happened last time, and some of it's easy. I'm going to  
24 have a section on discovery sanction, the audit, trail  
25 logs. And then I had this rather lengthy memo or proposal

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## PROCEEDINGS

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rather from you, Mx. Green. Let me try and go at this another way because this exercise has caused me to reinforce the view I had earlier.

So, Ms. Weiss, I think what has to happen now is you have to do the exercise of what we did here today on this call without me and in writing and really swiftly with respect to all the other requests. I know we've been through this before, and I don't want to dwell on the past until I have to, and I'm not there yet. (indiscernible) exactly what I said at the beginning. You notice we went through here, you got, you know, with the help of the people, thank goodness, from the Police Department who are on the line, we were able to definitively go through what burdens were and so forth.

And when you have a meeting with the plaintiffs, they're going to say to you, okay, document request, you know, 1, and you're going to say, you know, to do these types of documents, we would have to do the following things which involve getting a hundred boxes and going through them and so forth. And then you can say, if you think you could justify it, we're not going to do that. Here's what we are going to do, we're going to do this search, we're going to, and produce it based upon that search, and here's the documents. Either you can describe



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the documents, you'll know what documents you'll get out of that, or you'll say whatever documents are identified through that you'll produce.

And they can then come to me and say, you know what, this is not so burdensome, you can order the City to do this first thing. Or they may say, you know what, we're never going to convince Judge Gorenstein of that. Let's pick our battles, we're going to pick some other thing that we disagree with you on. We'll bring that to Judge Gorenstein. Or they'll think you're reasonable on all of them, who knows.

But you have to do the exercise of going through and saying exactly what you're going to produce and what you're not, and to the extent you're not producing it, and if it's on burdensomeness grounds rather than relevance, you need to specify in detail what that burden is. And you got to do that for every request. So first, Ms. Weiss, you understand what I'm asking?

MS. WEISS: Yes, Your Honor.

THE COURT: Okay, so that to me, it seems to me, it's got to be in writing. I think, you know, I mean if you guys think you want to talk first, that's fine, but that's got to happen really soon. For the non-prior protest documents, you know, maybe I'll give you another

1 week on that, but that's about it. That's a month from  
2 today. I want all - if this is done right, I want all the  
3 documents that are being produced to be done a month from  
4 today as to all the other categories.

5  
6 Now, it may be that there are some things, for  
7 example, some CCRB arrests, you know, from years ago,  
8 well, that's something that you could start depositions of  
9 high level people without having, and it would not be a  
10 great impediment to the plaintiffs proving their case.  
11 Some things are really important before we do high level  
12 depositions, things like mass arrest reports. But there  
13 are other things that are not as critical. So it may be  
14 there are some documents that can reasonably dribble in  
15 after March 18, and the plaintiffs can, the depositions do  
16 not have to be, deposition schedule does not have to be  
17 compromised. But that's an exception. That's not going  
18 to be, you know, it's not going to be the rule. The rule  
19 is everything should be produced by March 18.

20 Now, I need to know way in advance if there's  
21 things you're claiming burden on that you say, oh, we  
22 don't want to have to produce, because if I disagree, I'm  
23 going to make you produce them on March 18 probably. So  
24 that - and this was what was I trying to draft. You need  
25 to in a very short timeframe, like by the end of next

1 week, put together a chart, and it's not going to quite  
2 look like the chart you gave to me in 409. It's a  
3 different chart, it's a chart that gives the document  
4 request. It says what - and I'm going over this again, I  
5 know, but I want to make it really clear. It says what  
6 you're going to produce, and if appropriate you can say  
7 how you're going to produce it, you need to specify that.  
8 And then say here's what we're not going to do, and here's  
9 the burden of it, and that's why we're not going to do it.  
10 So that has to be put together for any remaining disputed  
11 discovery disputed discovery request.  
12

13 And I don't see how, you know, I was thinking in  
14 like two days, but I know next week is a short week, so  
15 I'm willing to put it off till next Friday. But that has  
16 to be, I mean that should be in your mind already it seems  
17 to me. But the time has come to essentially put up or  
18 shut up on all the document requests about what it is  
19 you're producing and what is not, what you're not.

20 Okay, so for purposes of drafting my order, I'm  
21 going to require that by February 28 you provide a letter  
22 that annexes a chart, this is what I'm doing - let me just  
23 read my draft. Annexed is a chart showing for each of the  
24 document requests, I'm not sure it's each, maybe it's the  
25 disputed ones. I'm going to hear from Mx. Green

1 PROCEEDINGS 100

2 momentarily. A description of the responsive documents  
3 that will be produced and, two, a description of the  
4 responsive documents the City declines to produce and a  
5 specific explanation of the objection. And if it relates  
6 to burden, a detailed description of that burden.

7 As to those documents, I'm going to order the  
8 ones that are responsive to be produced by March 18, and  
9 as to the ones that you say are too burdensome, I may  
10 still have you do it by March 18, but I'm going to need to  
11 know immediately if there's any dispute about that, and  
12 maybe we should set up a conference for the week of the  
13 28<sup>th</sup> so we can go through that if there are any disputes.  
14 Again, I'm going to keep it on hold and wait for the  
15 plaintiffs to tell me we need it.

16 And that's sort of what's going to be the sum  
17 total of my order at this point --

18 MS. WEISS: Your Honor --

19 THE COURT: Okay.

20 MS. WEISS: I'm sorry.

21 THE COURT: Go ahead.

22 MS. WEISS: I just wanted to clarify one thing.  
23 Are these, this chart for the document requests, I believe  
24 it's 101 document requests from the consolidated  
25 plaintiffs' counsel that had been provided previously, or

1 PROCEEDINGS 101

2 does this include much more recent documents, document  
3 requests served by some of the newer consolidated  
4 plaintiffs including Gray and Hernandez that wasn't part,  
5 that weren't part of this first group?

6 THE COURT: When did they come in?

7 MS. WEISS: I don't have the dates in front of  
8 me, but they did, there are discovery disputes in those  
9 cases, but they are much more recent disputes.

10 MX. GREEN: Your Honor, I think they're all --

11 THE COURT: Well --

12 (interposing)

13 MX. GREEN: They're all before the new year,  
14 and I think all of them, if not all of them, many of them  
15 are already subject to orders because defendants failed to  
16 respond.

17 THE COURT: Yeah, I mean, here's the thing, Ms.  
18 Weiss, what I'm talking about should not be something new.  
19 This is something that under Rule 34 you had to do a long  
20 time ago. So as long as these requests were more than 30  
21 days ago and it sounds like they were, I don't see any  
22 reason why you shouldn't be doing this. What I'm  
23 describing is a kind of a streamlined Rule 34 response.  
24 This is what you're supposed to do in Rule 34 anyway;  
25 you're supposed to say here's what I'm producing, here's

1 PROCEEDINGS 102  
2 the Bates numbers, and, you know, I'm not requiring you to  
3 do Bates numbers because I'm giving a little leeway, a  
4 little lead time before you actually have to produce it  
5 because it's not till the 18<sup>th</sup> on the second set, but I  
6 don't see why you shouldn't have to do that right now. SO  
7 the answer to your question is yes, it includes any new  
8 disputes.

9 MS. WEISS: Thank you, Your Honor, I just  
10 wanted to clarify that that was the case.

11 THE COURT: Okay. All right, I think that's  
12 all I was going to say about any of this, but I'm ready to  
13 hear from the plaintiffs.

14 MX. GREEN: Yes, Your Honor. So I think a  
15 couple thoughts. First, I already used the wrong word. I  
16 think that that sounds like an extremely useful exercise  
17 for the more recent, call them more recent document  
18 requests. I think, you know, we're talking about requests  
19 from somewhere between September and October. Because in  
20 those requests we still don't have documents or in many  
21 cases even objections.

22 For the first and second consolidated requests,  
23 what I tried to do in the order, and I understand it was,  
24 I'll call it a monster, what I tried to put in there, and  
25 I think, you know, we discussed 24 hours at the last

1 PROCEEDINGS 103

2 conference, and defendants did not object to the  
3 conference, so I assume that's, you know, we all agree  
4 that it was correct. What's in there is what we've agreed  
5 defendants are going to produce --

6 THE COURT: And you want it ordered.

7 MX. GREEN: Yes, exactly. Yes, yes, yes. I  
8 think we have managed to meet and confer as to at least  
9 the first and second consolidated requests. Our way  
10 around the burden objections, although, you know, I -  
11 perhaps the better --

12 THE COURT: Maybe, Mx. Green, maybe - remember  
13 there was that pages 5 through 8 --

14 MX. GREEN: Exactly.

15 THE COURT: -- of the letter. Is that what's  
16 really needed for this letter of the 28<sup>th</sup>?

17 MX. GREEN: So it's in part that, and we had  
18 agreed to narrow in some places, and we agreed, and there  
19 were also the second consolidated requests which we had to  
20 make a motion to get new objections on, and so we've  
21 agreed, at least I think we've agreed the scope of what's  
22 going to be produced in each of those instances. And I  
23 think that's what, you know, I spent quite a few hours  
24 putting together that order, and I think that's what's  
25 reflected in the first and second consolidated requests

1 sections of it is --

2 (interposing)

3 THE COURT: Hold on, let me just --

4 MX. GREEN: Sorry.

5 THE COURT: Let me just look at it for a  
6 second. I mean the reason I was thrown off by your order  
7 is I imagined an order that was summarizing the literal  
8 things I said in the conference, and you extrapolated to  
9 inferences, as it were --

10 MX. GREEN: I did, I apologize.

11 THE COURT: I'm not blaming you for that, but I  
12 just want to understand where we are on this. Okay, well,  
13 I mean what you did was give a listing then --

14 MX. GREEN: Yes.

15 THE COURT: -- of things they had agreed to?

16 MX. GREEN: That's how I understand it. You  
17 know, I don't want to put words in Ms. Weiss's mouth, but  
18 that's - it is based on my notes and everybody else on the  
19 team's notes from the meet and confers.

20 THE COURT: Well, I guess under my theory  
21 everything is being produced on the 18<sup>th</sup> that they have  
22 said that they would produce. Anything they said in the  
23 past they would produce, they now must produce on the 18<sup>th</sup>  
24 because they haven't put up the burdensomeness objection.  
25



1 PROCEEDINGS 105

2 MX. GREEN: Right.

3 THE COURT: So if you're telling me that's a  
4 list of what they said they would produce, then --

5 MX. GREEN: Correct.

6 THE COURT: -- that's where we are.

7 MX. GREEN: Right. I think that is it, you  
8 know, given how things happened in the past, I would not  
9 be shocked to see a new burdensomeness objection on some  
10 of these things that hadn't been asserted before. But --

11 THE COURT: Okay, so from your point of view  
12 the only dispute is what I'm calling pages 5 through 8 and  
13 that's what you need the chart on?

14 MX. GREEN: Sorry, no, pages 5 through 8 are  
15 covered by the proposed order. What we need the chart on  
16 are the Payne plaintiffs have a set of consolidated  
17 requests that you just wrote an order ordering defendants  
18 to respond to and finding their objections waived, except  
19 as to privilege. The Sow plaintiffs similarly have an  
20 independence, as do the Gray - did I say Gray plaintiffs?

21 THE COURT: Wait, wiat, wait, wait. Wait.  
22 You're not talking about - you're not talking about - I  
23 don't keep this in my mind by plaintiffs but by docket  
24 number. You're not talking about 379 and 370, you're  
25 talking about something else?

1	PROCEEDINGS	106
2	MX. GREEN: Let me pull the docket --	
3	THE COURT: No, it wasn't - I just gave the	
4	wrong numbers I think.	
5	MX. GREEN: But I think we're on the same page.	
6	Three seven --	
7	THE COURT: Hold on.	
8	(interposing)	
9	THE COURT: Say it again, say it again. What?	
10	MX. GREEN: 370 is the Payne motion that you've	
11	already issued an order on, and that's --	
12	(interposing)	
13	THE COURT: I issued an order on two things	
14	today. So we're not talking about that, right?	
15	MX. GREEN: I think we are talking about that	
16	actually.	
17	THE COURT: Okay, let's not - I don't need to	
18	do anything more on that, do I?	
19	MX. GREEN: I think the answer you find their	
20	objections waived, so no. But for the Gray responses,	
21	which I think we have only agreed to get documents and	
22	objections have not been found to be waived yet, that's	
23	somewhere where I think that chart would be very useful.	
24	THE COURT: Okay, so - I'm sorry, let's start	
25	again. Let's start with the chart and then let's deal	

1 PROCEEDINGS 107  
2 with the rest of it. Let's find out what's needed on the  
3 chart. I thought what's needed on the chart is - maybe we  
4 should start with - I'm not even sure now. You tell me,  
5 what do you think is - you understand what I think you  
6 need. Maybe you've gotten some of it. I mean if they're  
7 already agreed to produce something, I've no problem  
8 ordering that to be produced by March 18. Is there a way  
9 to identify that?

10 MX. GREEN: Yes, and I think that is exactly  
11 what I tried to do in the proposed order.

12 THE COURT: Okay, and where did you get those  
13 things from? Is that from like some other letter or is  
14 that from your --

15 MX. GREEN: So it's - some of it - it is from  
16 our meet and confer notes which then in turn the meet and  
17 confers were structured based on the letter, for example,  
18 with pages 5 through 8. Right? So we just went through  
19 that list at the meet and confer and found out what they  
20 were going to do and then agreed that they would do it by  
21 certain dates.

22 THE COURT: What's wrong with my idea which is  
23 to just do the chart for all of it, and then presumably  
24 for the ones they've agreed to, it'll --

25 MX. GREEN: Right.

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THE COURT: -- just say, yeah --

MX. GREEN: I suppose nothing's wrong with it.

That makes a lot of sense. The only thing that I will briefly say that I have concerns about is we have depositions slated for mid-March that I think if everything is getting pushed to March 18 instead of the 11<sup>th</sup>, you know, those are an important seven days.

THE COURT: All right, well, look, I think you have, I mean I was doing 30 days from today because I thought I already ordered a bunch of things for March 11. I would like to give them an extra week now since I already said it.

MX. GREEN: Understood.

THE COURT: Is it going to mess up your deposition schedule though?

MX. GREEN: Candidly, I think it will mess up at least some. You know, we're still at the drawing board figuring out what it is that we can do, but, you know, certainly having one week less than we thought we would have changes how we're thinking about things.

THE COURT: Okay, no, but I'm willing to tack a week on at the end --

MX. GREEN: Understood --

THE COURT: -- responsibility for that.

1 PROCEEDINGS 109

2 MX. GREEN: Understood. I think, you know, the  
3 only problem is that as far as scheduling depositions  
4 there are noticed depositions that just aren't on the  
5 schedule yet because defendants haven't scheduled them,  
6 and they have said there's no room to schedule them in the  
7 current schedule --

8 THE COURT: Is there any value, I mean I'm  
9 certainly willing - this is all the City's fault as far as  
10 I'm concerned - I'm certainly willing to require them to  
11 bring people back if documents pop up later on. On the  
12 other hand, I don't want to depose someone where you know  
13 there's going to be, you know --

14 MX. GREEN: Understood.

15 THE COURT: -- hours of deposition. So if you,  
16 you know, if you think it's likely that any new documents  
17 would require only deposition of, you know, like a  
18 redeposition of under an hour or something, then I would,  
19 you know, if you can commit to that, then it would  
20 certainly be fine to go forward --

21 MX. GREEN: Yeah.

22 THE COURT: -- and then it if it turned out  
23 that there were documents that, you know, specifically  
24 involve this deponent, you know, it's not that hard to put  
25 an hour here and there.

1 PROCEEDINGS 110

2 MX. GREEN: I suppose let me put it this way,  
3 if we're sure that we're going to, you know, be able to  
4 schedule everything wherein all the depositions we've  
5 noticed at some point before whatever ends up being the  
6 final end date in discovery, and we get to make the choice  
7 as to, you know, what risks we take with which deponents,  
8 I don't know that we have an objection to March 18.

9 THE COURT: Okay, so let's just stick with  
10 that. So, Ms. Weiss, you should do, you know, all the  
11 discovery requests. I don't think in the days of  
12 computers and with the new paralegal help Ms. Pistata is  
13 giving you, it shouldn't be very hard to put together a  
14 chart with these requests and, you know, says - if you  
15 promise to produce it, you're going to put in the chart  
16 will be produced by March 18. And if it's something else,  
17 then you'll put something else, and we talked about what  
18 that's going to look like. Mx. Green, does that cover it?

19 MX. GREEN: I think that does. Yeah, I mean  
20 and if it's inconsistent with what we agreed at a meet and  
21 confer, then we know how to get in touch.

22 THE COURT: Yeah. Should we reserve a time?

23 MX. GREEN: I think that makes a lot of sense  
24 and - yeah.

25 THE COURT: I said the 25<sup>th</sup> for the chart,

1 PROCEEDINGS 111

2 that's a week from today?

3 MX. GREEN: Correct.

4 THE COURT: So you'll need time to look at it.

5 Here's your choice, Tuesday afternoon or Thursday

6 afternoon.

7 MX. GREEN: I'll be greedy and say Thursday

8 because that's the better day for me, if it works for the

9 Court.

10 THE COURT: Ms. Weiss.

11 MS. WEISS: Thursday is a better day for me as

12 well. I'm unavailable on Tuesday afternoons. So that

13 works.

14 THE COURT: Okay, so March 3, let's say 3 p.m.

15 I'm just reserving it. I'm only going to hold it, Mx.

16 Green, if you tell me we need to do something or whoever.

17 MX. GREEN: Understood. Hope springs eternal.

18 THE COURT: Okay, let me just look at my order

19 to see. Give me a second to go over what I wrote. Just

20 give me a second. I'll let you say anything after that.

21 I need to think for a second.

22 So the chart showing for each outstanding

23 document request, is that the way to phrase it?

24 MX. GREEN: I think at this point it may make

25 sense to just not have to parse what's outstanding and

1 PROCEEDINGS 112

2 what's not.

3 THE COURT: Each document request. Okay.

4 MS. WEISS: Respectfully, Your Honor, that is,  
5 there were a lot of document requests that there wasn't an  
6 issue with, and to have to put them on the chart is just  
7 going to add a lot more time to what defendants really  
8 don't --

9 THE COURT: You mean you --

10 MS. WEISS: -- have a lot of time to do.

11 THE COURT: You've already fulfilled them, is  
12 that what you're saying?

13 MS. WEISS: There are definitely a number of  
14 requests that have been fulfilled or there's been no sort  
15 of disagreement on.

16 THE COURT: Mx. Green, as long as it's all the  
17 ones that were in your proposed order, you're going to be  
18 satisfied?

19 MX. GREEN: Yes, maybe the best thing to do is  
20 if defendants think that one, just have it cover all of  
21 them, and if defendants think that there's one they fully  
22 fulfilled, that's all they have to write. And if we  
23 disagree, we can raise it.

24 THE COURT: Wait, say that again.

25 MX. GREEN: So if let's say they think they've



1 PROCEEDINGS 113

2 done everything with regard to document request number 3,  
3 I assume it's actually going to be easier to make the  
4 spreadsheet if you don't omit numbers. So --

5 THE COURT: Yeah, that's a big deal. Just say  
6 3 fulfilled.

7 MX. GREEN: Right, exactly. I think that  
8 that's the best way to do it, and then if we disagree,  
9 then we can raise it.

10 THE COURT: Yeah, just say 3, fulfilled. I  
11 mean if you really want to, you could have a list of  
12 numbers at the end, 3, 12, 16, all fulfilled, whatever. I  
13 mean it seems that it's easier to have it in order, but if  
14 it makes a big difference to you, Ms. Weiss, you can put  
15 all the numbers together at the end and say they've been  
16 fulfilled.

17 MS. WEISS: Okay, we'll see how it works out  
18 easiest. Your Honor and Mx. Green, if you - well, Mx.  
19 Green really, if you could just send us a copy of the  
20 chart that you proposed, it would, or the list you  
21 proposed, it would make it a lot easier for us.

22 MX. GREEN: You were cc'd.

23 MS. WEISS: Yeah, I know, I don't see it. So  
24 if you could resend it, that would be very helpful.

25 MX. GREEN: Sure, I mean it's not in chart

1 PROCEEDINGS 114

2 form, so I suspect it's not --

3 (interposing)

4 THE COURT: It's a listing. It's a proposed  
5 order and it's a listing.

6 MS. WEISS: A list might still be helpful.

7 THE COURT: Okay, Mx. Green's going to send it  
8 to you.

9 MX. GREEN: Yep, absolutely.

10 THE COURT: Give me a second, I was looking at  
11 my document.

12 (pause in proceeding)

13 THE COURT: Oh, okay, so I think that's it. My  
14 document is going to have the discovery sanction, the  
15 audit trail logs, ruling, and the requirement to produce  
16 the chart and a requirement that all documents be produced  
17 by March 18. And, again, this is the non-prior protest  
18 documents. I already required March 11 for the prior  
19 protest documents. Any questions before we hang up? Mx.  
20 Green, anything?

21 MX. GREEN: Yes, Your Honor, just some quick I  
22 suppose clarifications. As I understand, the chart is  
23 going to cover four, the first and second consolidated  
24 requests. It will cover everything and either say  
25 fulfilled or it will say what we're getting or, you know,

1 PROCEEDINGS 115

2 exactly what you just described. I don't mean to try to

3 limit it there. We're also going to be getting in that

4 chart things that fully cover every other document, set of

5 document requests. Correct?

6 THE COURT: I don't understand what you just

7 said.

8 MX. GREEN: So there are two consolidated

9 document requests. There is - then individual plaintiffs

10 also have some narrower document --

11 THE COURT: You said it's the two consolidated

12 requests plus - right, I said as long as it's more than 30

13 days old, I want it in there.

14 MX. GREEN: Great. Just making sure.

15 THE COURT: Right. Yeah.

16 MX. GREEN: And then for certain document

17 requests, one of the things we've been hearing from

18 defendants --

19 THE COURT: Hold on a second. Just for

20 purposes of my order, are there any document requests

21 later than 30 days ago?

22 MX. GREEN: I don't believe so.

23 THE COURT: Okay, so I'm just going to say each

24 existing document request. All right, go ahead, what were

25 you saying?

1 PROCEEDINGS 116

2 MX. GREEN: And one of the responses we've  
3 gotten a lot is already produced without any specificity.  
4 If defendants are going to assert that something was  
5 previously produced, not, right, so if they produce - they  
6 are claiming they produced it in response to the first  
7 consolidated requests, that's done, but in response to,  
8 say, the Gray plaintiffs' requests, if they're saying  
9 something has already been produced, I think we should,  
10 they should in that chart have to identify the Bates range  
11 where it exists.

12 THE COURT: All right, Ms. Weiss, so this is  
13 for the later document requests. If you're saying that  
14 you have produced something in response, you should  
15 identify where that is.

16 MS. WEISS: We advised counsel that - I'm  
17 sorry. We advised counsel that we would let them know  
18 where in the prior productions, and it's mostly the email  
19 productions that we've been talking about, that those  
20 documents were provided. It's much more difficult to  
21 provide the Bates numbers because of the way they are in  
22 our system, but we told plaintiffs and we will point them  
23 to where the documents are.

24 THE COURT: In some manner other than Bates  
25 numbers?

1 PROCEEDINGS 117

2 MS. WEISS: Yeah, I mean if it ends up being  
3 easier to do it by Bates numbers, that's fine, but it  
4 would more likely be pointing them to a place in the prior  
5 productions where they can find those documents. It might  
6 turn out that Bates numbers is the easiest, but it's --

7 THE COURT: Let's leave this for another day.  
8 Hopefully, this will be clear. Anything else, Mx. Green?

9 MX. GREEN: I think that covers everything.  
10 Yep, that covers everything.

11 THE COURT: Ms. Weiss, anything?

12 MS. WEISS: Yeah, just one thing, Your Honor.  
13 Plaintiffs in one of the cases that was consolidated I  
14 believe served discovery requests less than 30 days ago.  
15 I know that we just got discovery requests might be --

16 THE COURT: If it's less than 30 days ago, they  
17 don't have to be on the chart.

18 MS. WEISS: Okay, thank you. That is it.

19 THE COURT: I mean you need to respond however  
20 --

21 MS. WEISS: Well, yes.

22 THE COURT: -- under Rule 34, and it may make  
23 your life easier to put it on the chart.

24 MS. WEISS: Understood.

25 THE COURT: But a proper response under Rule 34

1 PROCEEDINGS 118

2 is going to do 90 percent of what I just described. I  
3 don't think a Rule 34 response you'd have to detail the  
4 burden and so forth, but you have to describe what you are  
5 producing and what you aren't producing.

6 MS. WEISS: Of course.

7 THE COURT: Just keep that in mind.

8 MS. WEISS: Yes, Your Honor.

9 MX. GREEN: And I'm sorry, I made a mistake. I  
10 think the only other thing, there is one other thing which  
11 is privilege log and timing for privilege log.

12 THE COURT: Oh, right. Geez. Well, I think I  
13 already ruled on that. Produce it at the same time.

14 MX. GREEN: I had thought so too. Defendants  
15 have interpreted your order to mean that they have a  
16 couple of weeks after production to produce privilege  
17 logs.

18 MS. WEISS: That's not true. There have been  
19 times where we had asked for more time, and producing it  
20 on the same day is often not possible, especially some of  
21 these productions that are likely going to be - there  
22 could possibly be thousands of pages that are privileged,  
23 and we would request some extra time after the date of  
24 production to produce the privilege log.

25 THE COURT: I'm just curious, where's the - I -

1 PROCEEDINGS 119

2 where's the privilege stuff coming in in this - you know,  
3 in the email production I understand, but in some of this  
4 document type production, where does the privilege come  
5 in?

6 MS. WEISS: There is often documents that are  
7 subject to the law enforcement privilege. You know,  
8 that's the first one that comes to mind. There are also  
9 intelligence type stuff, intelligence type documents.  
10 There's also going to be personally identifiable  
11 information, PII, you know, there could be police  
12 officers' personal phone numbers or their families' names  
13 that --

14 THE COURT: Okay, well, hold on, hold on. I  
15 assume you're redacting things, personal information.

16 MS. WEISS: Yes.

17 THE COURT: Right? If you're redacting  
18 something and it's obvious it's someone's name or date of  
19 birth or social security number, you don't have to do a  
20 privilege log for that. All right, I'll tell you that  
21 right now. Anything else, yes, but just things that are  
22 personal identifying information, minor redaction that's  
23 obvious from context what it is, you don't have to do a  
24 log.

25 MS. WEISS: Okay. So it just could possibly be

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2 subject to the law enforcement privilege. There might be  
3 a lot, there might not be a lot.

4 THE COURT: Well, the presumption is you're  
5 doing it on that date. If as I - as you're doing this  
6 production you think - and, remember, you can do a  
7 privilege log categorical if that's appropriate. But if  
8 you think you need more time, ask for it as soon as  
9 possible.

10 MS. WEISS: Yes, Your Honor, the issue with  
11 categorical though or a little bit in the broader sense,  
12 plaintiffs have --

13 THE COURT: I pretend - forget I said that.  
14 I'm not encouraging you to do a categorical log. I'm  
15 happy to have you do an individual log. So I don't want  
16 to spend time on that.

17 MX. GREEN: Your Honor, I think 40 email  
18 production, for example, defendants didn't, told us that  
19 they were on track to meet the deadlines, and then the day  
20 of the final production, they said that they weren't going  
21 to be producing a privilege log until the end of January,  
22 which was two or three weeks away. You know, I think if -  
23 what I guess troubled me here is --

24 THE COURT: Okay, okay, hold on, hold on. Hold  
25 on. Mx. Green, Ms. Weiss, if you know you can't do a log



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on that date, there's no reason you won't know at least a week in advance. So if you're going to make an application, and also I may not grant it. So I think you'd be crazy to wait longer than a week beforehand to ask for an extension.

MS. WEISS: Absolutely, Your Honor.

THE COURT: Does that solve your problem, Mx. Green?

MX. GREEN: It very much does, thank you, Judge.

THE COURT: Okay. Anything else for today from - I already asked the plaintiffs. Anything else, Ms. Weiss?

MS. WEISS: No, Your Honor.

THE COURT: Okay, thank you everyone, good bye.

(Whereupon the matter is adjourned.)

C E R T I F I C A T E

I, Carole Ludwig, certify that the foregoing transcript of proceedings in the United States District Court, Southern District of New York, In Re: New York City Policing During Summer 2020 Demonstrations, docket #20cv8924, was prepared using PC-based transcription software and is a true and accurate record of the proceedings.

Signature \_\_\_\_\_

CAROLE LUDWIG

Date: February 22, 2022